DOCUMENT RESUME

ED 114 453 UD 015 580

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TITLE Minorities and Women as Government Contractors.
INSTITUTION Commission on Civil Rights, Washington, D.C.
PUB DATE May 75
NOTE 206p.

EDRS PRICE MF-$0.76 HC-$10.78 Plus Postage
DESCRIPTORS Administrative Agencies; *Administrative Policy; Affirmative Action; *Agency Role; Budgeting; *Civil Rights; Contracts; Expenditures; *Federal Government; Federal Programs; Minority Groups; National Surveys; Program Budgeting; *Purchasing; Resource Allocations; Working Women

ABSTRACT

The stated objectives of the study reported here were to determine the answers to the following questions: what Federal, State and local programs provide contracting opportunities for minorities and women equal to those provided to nonminority males; if not, what the barriers to their full participation are; to what extent special State or local contracting programs have been established to facilitate contracting with firms owned by minorities and women; whether distinct organizational mechanisms have been established to implement such special contracting programs, and if so, whether such mechanisms are adequately equipped to carry out their task; whether goals have been established for such programs and are these programs achieving their goals; whether the type and size of contracts being awarded through the special programs aid the development of the firsts they are designed to assist; whether there is an edequate flow of information to minorities and women regarding Federal, State, and local contracting opportunities; whether unique problems are encountered by minority and female-owned firms supplying goods and services to government agencies; and, whether the government's purchasing power is being effectively used to aid the development of firms owned by minorities and women. Data on Federal contracting programs were gathered from responses to a questionnaire sent to 10 Federal agencies and two offices responsible for administering Indian programs. (Author/JM)

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MINORITIES AND WOMEN AS GOVERNMENT CONTRACTORS

ED 114 453

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A Report of
the United States
Commission on Civil Rights
May 1975

UD015580

U.S COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C., MAY 1975

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The Commission on Civil Rights presents to you this report pursuant to Public Law 85-315 as amended.

On March 5, 1969, the Federal Government established through Executive Order 11458, as amended, a policy of assisting minority businesses by providing loans, technical aid, and government contracting opportunities. Subsequently, three special programs - the 8(a) Subcontracting Program, the Buy Indian Program, and the Minority Subcontracting Program - were established to assist minority-owned firms in obtaining Federal contracts. No such policy, however, was directed toward businesses owned by nonminority women. Consequently, no programs have been established to provide assistance to them.

This report is concerned primarily with minorities and women as government contractors. It analyzes the extent to which minorities and women share in $120 billion worth of Federal, State, and local government contracts annually; the problems encountered by firms owned by minorities and women seeking government contracts; the opportunities provided minority firms through special contracting programs, and the extent to which nonminority women are entitled to participate in these programs.

Data on Federal contracting programs were gathered from responses to questionnaires sent to 10 Federal agencies and 2 offices within Federal agencies which are responsible for administering Indian programs. Data on State and local government programs were gathered from 76 responses to 137 questionnaires sent to State, city, and local governments. The Commission also conducted extensive interviews in five States, the District of Columbia, and on three Indian reservations.

Our investigations revealed that minority and female-owned firms encounter problems of staggering proportions in obtaining information on Federal, State, and local government contracting opportunities in time to submit timely bids, and in obtaining the working capital necessary for effective marketing and bidding. Minority and female entrepreneurs also encounter a great deal of skepticism regarding their ability to perform adequately on government contracts. Government contracting officers and program officials expressed reservations concerning the ability of minority-owned firms to perform, although no specific cases of inadequate performance by minority firms were brought to the attention of the Commission's staff by these contracting officials.

The three special Federal programs established to assist minority-owned firms have experienced limited success in increasing the number and dollar value of contracts awarded to these firms. However, they have not been successful in assisting minority firms to surmount their working capital problems or in obtaining timely information on government contracting opportunities. In fact, although the programs have been in operation for 5 years, the Commission found only 3 of the 125 companies it interviewed which asserted they were definitely helped by them. These companies, however, have continued to market for government contracts.

The Commission found that these three Federal programs lacked effective planning and coordination, commitment, sufficient data for making important program decisions, and procedures for matching contracting opportunities with the needs and abilities of minority firms.

State and local efforts to provide contracting opportunities to minorities and women have been stimulated by Federal orders directed towards State and local governments receiving grants-in-aid. Executive Order 11246 (September 24, 1965), as amended, requires Federal grantees and contractors to provide equal employment opportunities to minorities and women on federally-assisted projects. The Secretary of Labor has interpreted this to mean subcontracting opportunities as well, and nearly half of the jurisdictions with affirmative action plans have adopted minority subcontracting programs. Also, a provision in the Office of Management and Budget's Circular A-102 directs State and local grantees to exert efforts to provide contracting opportunities to minority businesses. None of these programs, however, has included firms owned by nonminority women as part of the target group.

State and local efforts to comply with these directives have been limited. Only 10 of the 76 jurisdictions which responded to a Commission questionnaire had established programs to provide contracting opportunities to minority firms, and none provided these opportunities to nonminority female-owned firms. In fact, these programs have met with little success in aiding minority-owned firms.

As a result of the limited impact of the Federal, State, and local special contracting programs, minorities receive less than seven-tenths of 1 percent of the $120 billion spent annually by these governments for contracts, and the identifiable share of contracts awarded to firms owned by women is imperceptible.

The Commission trusts that its findings and recommendations will prove helpful to the executive and legislative branches as they seek to structure programs that will be more responsive to the needs of minority firms and will provide new opportunities for nonminority, female-owned firms.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

PREFACE

The combined purchases of the Federal Government for FY 1972, and State and local governments for calendar year 1972, exceeded $120 billion, providing contracting opportunities for almost every segment of the American business community. Firms owned by minorities and women,[1] however, received less than 1 percent of the total dollar value of all government contracts according to information supplied to the Commission by Federal, State, and local governments.[2]

When this study commenced in 1973, very little information had been gathered on either the extent to which contracting opportunities were available to minorities and women or the number and dollar amounts of contracts awarded to them. Furthermore, nothing had been published which assessed the implementation and effectiveness of contracting programs established to aid minority businesses or determine whether businesses owned by minority and nonminority women have access to such programs. This report partially seeks to fill this gap; its conclusions are based not only upon the analysis of published census and procurement data, but also on information compiled from questionnaires and interviews.

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1. A firm is considered to be minority or female-owned when a minority person or female owns: a sole proprietorship; more than 50 percent of a partnership; or in the case of a corporation, more than 50 percent of the outstanding stock of the corporation.

2. The Commission collected data from State and local governments for FY 1972 and also verified contracting data for Federal agencies for the same fiscal year. Since the Commission found substantial discrepancies between the amount of contract dollars awarded to minority businesses as reported by the Office of Minority Business Enterprise (OMBE) and the dollar amount of such contracts as reported by the various agencies, the Commission used the verified, FY 1972 contracting figures for its analysis. However, OMBE reported $701.3 million worth of contracts and subcontracts as being awarded to minority firms in FY 1974. Assuming Federal contracting remained at the FY 1972 level and the accuracy of OMBE's FY 1974 figures, this would represent 1.2 percent of total Federal contracting. The $701.3 million, however, admittedly includes contracts awarded by private and public grantees of Federal funds.

7/8

OBJECTIVES OF THE STUDY

Since the Minority Enterprise Program was established administratively in March 1969, little has been done to determine whether efforts to increase government contracting with minority firms have been successful. Also, it was not clear whether such programs were accessible to nonminority women on the same basis as they were to minorities. Thus, the specific objectives of the Commission, in this study, were to determine the answers to the following questions:

* Do Federal, State, and local programs provide contracting opportunities for minorities and women equal to those provided to nonminority males? If not, what are the barriers to their full participation?
* To what extent have special State or local contracting programs been established to facilitate contracting with firms owned by minorities and women?
* Have distinct organizational mechanisms been established to implement such special contracting programs, and, if so, are such mechanisms adequately equipped to carry out their task?
* Have goals been established for such programs and are these programs achieving their goals?
* Will the type and size of contracts being awarded through the special programs aid the development of the firms they are designed to assist?
* Is there an adequate flow of information to minorities and women regarding Federal, State, and local contracting opportunities?
* Are unique problems encountered by minority and female-owned firms supplying goods and services to government agencies?
* Is the government's purchasing power being effectively used to aid the development of firms owned by minorities and women?

SOURCES OF DATA

Data on Federal contracting programs were gathered from responses to a questionnaire sent to 10 Federal agencies and two offices responsible for administering Indian programs: the Bureau of Indian Affairs (BIA), in the Department of the Interior, and the Indian Health Service (IHS), in the Department of Health, Education, and Welfare.

The 10 agencies were selected on the basis of the size of their procurement operations and their reported participation in the Minority Enterprise Program. Agencies that award numerous or substantial contracts to minority firms were included as well as those agencies that award very few contracts to such firms.[3] Also, there was an effort to include agencies that purchased a variety of goods and services, including construction, hardware, and research services. The agencies selected were: the Department of Agriculture; the Department of Defense; the Environmental Protection Agency; the General Services Administration; the Department of Health, Education, and Welfare; the Department of Labor; the Department of Housing and Urban Development; the Postal Service; the Department of Transportation; and the Veterans Administration. The Commission staff interviewed 53 contracting officials in these agencies.

The Commission also sent questionnaires to 137 State and local governments to obtain data on their contracting with minority and female-owned firms. In addition, interviews were conducted with 16 representatives of minority business development organizations and six women who were either representatives of female business development organizations or experts on the subject. The purpose of these interviews was to get an overview of the problems confronting minorities and women seeking government contracts and to identify minority and female-owned firms, especially in manufacturing. Finally, the Commission interviewed 84

3. No data are kept by the 10 Federal agencies surveyed by the Commission that would indicate which agencies are contracting with firms owned by women.

minority males, 20 minority females, and 21 nonminority female business persons.[4]

THE AVAILABILITY OF DATA

Although responses to the Commission's questionnaires to Federal, State, and local governments yielded some useful information, very little was obtained in the way of hard data. Federal agencies do not collect data on contracts awarded to either minority or nonminority women. Data reported by the agencies regarding contracts and subcontracts competitively awarded to minorities are not based on sound data collecting procedures and are often estimates or guesses. Data were virtually nonexistent at the State and local and levels, and where data were collected, rarely were they cross-classified by race and sex.

Given the unreliability and inadequacy of the data, more reliance had to be placed on the observations and experience of program officials and participants in assessing the effectiveness of special contracting programs.

This report analyzes the material in two parts. Part I analyzes the participation of minority and female-owned firms as Federal contractors, while Part II addresses their participation as State and local government contractors.

THE USE OF FY 1972 DATA

The Commission in undertaking this analysis drew heavily upon FY 1972 data compiled by the President's Commission on Government Procurement, since it was the most current and reliable data available at the time the study began and the use of more current statistics would have entailed a protracted and complex task of reconciling and verifying disparities in figures reported by the contracting agencies and departments, SBA and the Office of Minority Business Enterprise (OMBE), and the minority and female contractors.

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4. See appendix A or a comprehensive analysis of the methodology used by the Commission in obtaining the data for this report. It includes a discussion of the bases for selecting interviewees, and the size and industrial classification of the firms whose owners were interviewed.

Though the volume of contracting with minorities has increased since FY 1972, the ratio of contracts awarded minority and female-owned firms to total contracting has changed only slightly. DOD, for example, awarded 0.27 percent of its contracts through the 8(a) program in FY 1972 and 0.35 percent in FY 1974. Where relevant, however, data for more recent years are cited in the report.

ACKNOWLEDGMENTS

The Commission is indebted to the following staff members and former staff members who participated in the preparation of this report under the supervision of James B. McDaniel, Project Director, Office of Program and Policy Review: Claudette Brown, Ruby P. Chandler, *Diane DePreist, Moses Lukaczer, Gwen L. Morris, Betty Murphy, *Jose Rodriguez, *Vilsen Salinas, Deborah Snow, Mary Watson, Antoinette Foster, *Molly Williamson, and Candy Wilson.

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*No longer employed by the Commission.

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PART I

MINORITIES AND WOMEN AS FEDERAL CONTRACTORS

INTRODUCTION

The Federal Government spent approximately $57.5 billion for goods and services purchased from private contractors in FY 1972. Figures for FY 1974 have not been reconciled, but from all indications total contracting amounts were higher than for FY 1972. In FY 1972, the combined total of Federal contracts awarded to minority and female-owned firms, however, amounted to less than 1 percent of the overall amount.

Federal agencies purchase a variety of goods and services ranging from weapon systems to paper clips, from sophisticated consulting services to janitorial and landscaping services. In addition to government-wide procurement of standard commercial products, agencies such as the National Aeronautics and Space Administration, the Energy Research and Development Administration, and the Department of Defense stimulate new technological and industrial developments to meet space exploration, energy, and national defense needs. Federal contracting plays a significant role in the economy, purchasing an amount equal to 4.8 percent of the gross national product in FY 1972. However, the industrial distribution of minority and female businesses and the nature of Federal spending tend to limit the potential for the participation of such firms as contractors.

An analysis of government purchasing by broad industrial categories for 1973 categorized Federal contracting as follows: construction, 8.7 percent; materials and supplies, 53.3 percent; and services, 38.0 percent.[5] An analysis of FY 1967 Federal contracting, which was published in 1974 and is the most recent detailed analysis available, shows that 70.6 percent of all purchases from manufacturers for materials and supplies were in five categories of products: (1) military weapons and accessories; (2) chemicals and selected chemical products; (3) radio, television, and communications equipment; (4) aircraft and parts; and (5) transportation equipment (including ship and boat building).[6] A major portion of Federal purchases of services were for repairs, research, professional services, and travel accomodations (transportation and lodging).

This same analysis of government contracting by industrial categories for FY 1967 shows that the Federal Government consumed a significant portion of the total national output of several categories of manufactured products, such as weapons and accessories; aircraft and aircraft parts; and radio, television, and communications equipment (see table 1).

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5. Calculated from data provided in the U.S., Department of Commerce, Survey of Current Business, table 3.14 "Government Purchase of Goods and Services by Type, Annually and Quarterly," July 1974, p. 32. The percentages are for 1973. For purposes of this analysis, purchases are categorized as construction, materials and supplies, and services. The Survey of Current Business refers to construction as "structures" and materials and supplies as "durables and nondurables."

6. Calculated from data provided in the U.S., Department of Commerce, Survey of Current Business, table I, "Interindustry Transactions, 1967," vol. 54, no. 2 (February 1974), pp. 42-43.

TABLE 1. FEDERAL CONSUMPTION OF THE OUTPUT OF SELECTED INDUSTRIES (FISCAL YEAR 1967)

Industry	Federal Purchases Percent of Total Output
Ordnance & Accessories	77.0
Aircraft and Parts	39.3
Radio, Television, and Communication Equip.	33.7
Transportation Equip.	19.8
Office Machines	8.0
Maintenance and Repair Construction	6.2
Office Supplies	6.8
New Construction	4.3
Other Furniture and Fixtures	3.2

Source: U.S., Department of Commerce, Survey of Current Business, vol. 54, no. 2 (February 1974), table I, pp. 42-43.

The contracting opportunities for firms producing the goods and providing the services listed in table 1 are substantial. The dearth of minority and female-owned firms in these industries (see chapter 1), however, limits their potential for increased participation as government contractors.

In the late 1960's, the Federal Government recognized the existence of the difficulties facing minority businesses and the need for minority economic development. Shortly after taking office, President Nixon issued Executive Order 11458 (March 1969), announcing a national policy of fostering minority business ownership and development. Using the mechanisms of Executive orders, Federal regulations, and congressional appropriations, the administration developed a range of programs that it spread among several agencies. These programs together comprise the Minority Enterprise Program, which assists minority-owned firms in a variety of ways, including loan packaging, contracting, and technical assistance.

Three special programs were established to assist minority firms' efforts to increase their share of Federal procurement dollars: the Small Business Administration's 8(a) subcontracting program based on the authority given the SBA by section 8(a) of the Small Business Act to contract with Federal agencies to provide goods and services and and, in turn, subcontract the actual work to socially and economically disadvantaged businesses; the minority subcontracting program, authorized by a contracting regulation which urges major Federal contractors to offer subcontracting opportunities to minority-owned firms; and the Buy Indian program, based on a statutory provision authorizing the Bureau of Indian Affairs and the Indian Health Service to contract directly with Indian firms. Despite differences in operation, the common purpose of these programs is to develop markets for minority businesses. In contrast, the other programs in the Minority Enterprise Program, such as the Equal Opportunity Loan and Management Assistant Programs, focus on the development of financial and technical resources.

Although there is a national policy recognizing the need for special contracting programs for minorities, including minority women, there is no policy recognizing such a need for nonminority women. This part of the report examines factors impeding minority and female-owned firms in obtaining Federal contracts, analyzes the availability of special contracting programs for minority and nonminority women, and assesses the objectives, operations, and effectiveness of the three special Federal contracting programs designed to assist minorities.

Chapter 1

MINORITIES AS FEDERAL CONTRACTORS

The most comprehensive data on contract awards to minority firms are contained in the annual report of the Office of Minority Business Enterprise (OMBE) in the Department of Commerce. According to OMBE, the Federal Government's purchases from identified minority firms totaled almost $394 million in FY 1972 (see table 2). The total for FY 1969 was $12.7 million.[7] Both figures include direct contracts, subcontracts awarded by major government contractors,[8] and subcontracts awarded through the Small Business Administration's Section 8(a) subcontracting program.[9]

Contracts awarded to firms which have been identified as minority owned totaled 0.7 percent of all Federal procurement in FY 1972[10] despite the fact that minorities owned 4 percent of all American businesses in 1969. The 1972 gross receipts for all minority firms are not yet available; but, using OMBE figures, Federal purchases from minority firms in FY 1972 totaled less than 3.8 percent of the 1969 minority gross receipts.[11]

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7. See U.S., Department of Commerce, Office of Minority Business Enterprise, Report to the President on Minority Business Enterprise (1972), p. 1. According to OMBE figures, total contracts and subcontracts awarded to minority firms in FY 1974 amounted to $701.3 million. This figure, however, has not been verified and admittedly includes contracts awarded by private and public grantees of Federal funds.

8. See chapter 7 for a discussion of the subcontracting program.

9. See chapter 5 for a discussion of the 8(a) program.

10. Total Federal purchases for FY 1972 amounted to $57.5 billion. Report of the Commission on Government Procurement (Washington, D.C. GPO, 1972), appendix D, p. 155 (hereafter cited as Report of the Commission on Government Procurement).

11. U.S., Department of Commerce, Bureau of the Census, Minority-Owned Businesses: 1969, MB-1 (1971), p. 1. (Hereafter cited as Minority-Owned Businesses: 1969.)

TABLE 2. SUMMARY OF FEDERAL CONTRACTS AWARDED TO MINORITY BUSINESSES

Fiscal Year 1972 (July 1, 1971-June 30, 1972)

	8(a) Procurement [1]	Direct Procurement [2]	Total
Small Business Administration	-	-	-
Commerce, Department of	$ 959,326	$ 43,711,050	$ 44,670,376
ACTION	(610,000)	2,364,649	2,364,649
Agriculture, Department of	2,584,869	1,050,000	3,634,869
General Services Administration	34,179,172	4,853,678	39,032,850
Defense, Department of	73,696,236	-	73,696,231
Health, Education, and Welfare, Department of	10,813,174	13,231,495	24,044,669
Housing and Urban Development, Department of	518,922	89,314,217	89,833,139
Interior, Department of the	1,427,863	47,528,992	48,956,855
Justice, Department of	579,500	-	579,500
Labor, Department of	1,572,859	18,033,946	19,606,805
National Aeronautics and Space Administration	3,168,042	5,326,000	8,494,042
Office of Economic Opportunity	2,354,758	3,274,000	5,628,758
Postal Service	433,288	1,580,676	2,013,964
State, Department of	129,049	1,565,066	1,694,115
Transportation, Department of	7,613,343	1,310,274	8,923,617
Treasury, Department of the	81,083	20,221	101,304
Veterans Administration	9,510,855	9,090,000	18,600,855
Atomic Energy Commission	187,868	-	187,868
Executive Office of the President	25,000	-	25,000
Civil Service Commission	39,993	-	39,993
Environmental Protection Agency	930,362	-	930,362
Equal Employment Opportunity Commission	421,081	-	421,081
Redevelopment Land Agency	371,507	-	371,507
Total	$151,598,150	$242,254,264	$393,852,414

1. 8(a) procurement figures from SBA report dated July 29, 1972.
2. Includes subcontracting to minority-owned firms by prime contractors.

Source: U.S., Department of Commerce, Office of Minority Business Enterprise, Progress Report, The Minority Business Enterprise Program (1972), p. 26.

These statistics may even overstate the extent to which minorities participate in government contracting. The most reliable data are those provided to OMBE by the Small Business Administration (SBA) on 8(a) purchases.[12] Other OMBE data on direct contracts and subcontracts are inconsistent with data submitted to the Commission by Federal agencies. Figures supplied by 3 of the 10 Federal agencies that responded to the Commission inquiry differ substantially from the data furnished by OMBE.[13] The Department of Housing and Urban Development (HUD) indicated to the Commission that it awarded only $2.3 million in contracts to minority firms, while OMBE reported that HUD had awards of $89.8 million.[14] (See table 2.) The Veterans Administration (VA) reported $1,840,393 less than the amount reported by OMBE, while the Department of Transportation (DOT) reported $450,000 more than the amount given by the OMBE report.

If the OMBE report (see table 2) is adjusted to reflect the figures supplied by these three agencies, total Federal purchases from minority-owned firms are reduced by approximately 25 percent to $300,056,487.[15] Also, while the Federal Government purchases goods and services equal to approximately 4.8 percent of the gross national product, according to responses to the Commission's questionnaire its purchases of goods and services from minority firms were less than 2.9 percent of the $10.6 billion minority gross receipts for fiscal year 1969.

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12. Some of the inadequacies of SBA's data are discussed in chapter 5.

13. However, the OMBE figures included contracting opportunities provided by Federal grantees, which are not strictly direct Federal procurements and, thus, improperly included as a Federal contract or subcontract.

14. The HUD figures for FY 1974 are even more suspect. While OMBE reported that HUD awarded $142 million in contracts to minority-owned firms, HUD's total contracting was only $246.5 million. OMBE officials concede that HUD figures may include contracts awarded by grantees, which are not, in effect, Federal contracts or subcontracts.

15. The Department of Defense does not maintain records on direct procurement from minority firms, so neither the OMBE total nor the Commission's adjustment include DOD's direct purchases.

CHARACTERISTICS OF MINORITY-OWNED FIRMS

The current potential for significantly increased participation of minorities as government contractors is limited by the number of such firms, their industrial distribution, and their size. While the Federal Government spent 53.3 percent of the total dollar value of its contracts for materials and supplies (manufactured goods), minority firms are not well represented in industries that produce these goods. According to the 1969 Census of Minority Businesses, there are 321,958 minority firms in the United States with gross receipts totaling $10.6 billion.[16] These firms are overwhelmingly concentrated in the retail and nonprofessional service industries in which the Federal Government does the least amount of contracting (see table 3).

In manufacturing, the disparity between the number of minority firms and all manufacturing firms is pronounced. According to estimates,[17] manufacturing firms numbered 401,000 in 1967, accounting for 5.3 percent of all firms while minority manufacturers numbered only 8,000 in 1969, accounting for 2.5 percent of all minority firms. More important, manufacturing accounts for 39.3 percent of the gross receipts of all firms, but only 6.1 percent of the gross receipts of minority firms.

Minority construction firms comprised 9.2 percent of all minority firms in 1969, while construction firms accounted for 11.4 percent of all firms in 1967. Most minority construction firms are classified as specialty constractors. In fact, only 1,627 or 5.4 percent of all minority construction firms are general contractors with paid employees. Since the Federal Government contracts with general construction contractors rather than specialty contractors for new construction, minority firms are rarely able to benefit directly from government spending for new construction.

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16. Minority-Owned Businesses: 1969, p. 7.

17. The 1972 Census of Minority Businesses used 1967 comparisons for all firms because it was the most recent data available at the time the minority census was conducted.

TABLE 3. COMPARATIVE ANALYSIS OF THE INDUSTRIAL DISTRIBUTION AND GROSS RECEIPTS OF FIRMS OWNED BY MINORITIES AND ALL U.S. FIRMS

Classification	Percentage of Firms		Percentage of Gross Receipts	
	All Firms	Minority Firms	All Firms	Minority Firms
	1967	1969	1967	1969
Construction----------	11.43	9.22	6.1	8.9
Manufacturing----------	5.35	2.48	39.3	6.1
Wholesale----------	5.78	1.70	14.2	8.8
Finance and Real Estate--	16.33	6.77	5.8	5.1
Selected Services---------	24.07	31.31	4.1	13.8
No Classification---------	4.90	11.01	2.0	4.9
Retail----------	27.32	30.11	21.4	48.7
Transportation----------	5.79	7.36	7.1	3.7
Total----------100.00		100.00	100.00	100.00

Source: U.S., Department of Commerce, Bureau of the Census, Minority-Owned Businesses: 1969, MB-1 (1971).

The limited size of most minority firms, measured in terms of the number of employees, volume of business, and the financial resources available to them, tends to make it more difficult for them to compete for Federal contracts and comply with preaward survey standards for Federal contracts.[18] Only 90,000 or 27.9 percent of all minority firms have paid employees, and they are mostly retail firms. The average number of employees for all minority firms was four in 1969, while minority manufacturers averaged eight employees per firm.[19] The average gross receipts for all minority-owned firms was $33,000 annually while the average gross receipts for all United States firms was $200,000.[20]

18. Federal contracting officers are authorized to conduct surveys to determine whether proposed contractors have or are able to obtain the necessary financial resources, equipment, and personnel. 41 C.F.R. 1-1 1203-(1) (a), 1.1-1203-4.

19. Minority-Owned Businesses: 1969, table 7, pp. 142-43.

20. Calculated from data in Minority-Owned Businesses: 1969, p. 1, and table B, p. 2.

Few minority-owned firms are considered major enterprises. Practically all are small businesses, according to the Federal procurement regulations.[21] For example, the regulations state that a construction contractor must have gross receipts exceeding $7.5 million for 3 successive years not to be considered small, and manufacturers must have at least 500 employees. (More employees are required in certain industrial categories such as: food and kindred products, 750; and ordnance and accessories, 1,500).[22] According to "The Black Enterprise 100,"[23] only one of the construction firms listed exceeded the $7.5 million small business limitation, while none of the 28 manufacturing firms exceeded the limitation on the number of employees allowed a small manufacturing firm.

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21. Procurement Regulation 41 C.F.R. § 1-1701-1 prescribes size and gross receipt limitations for firms eligible for participation in small business set-aside contracts.

22. 41 C.F.R. 1-1.701 (a) (b) (1).

23. "The Black Enterprise 100" is a compilation of the top 100 black companies, based on gross receipts for calendar year 1972, which was published in Black Enterprise, June 1973, p. 37.

Chapter 2

WOMEN AS FEDERAL CONTRACTORS

There is very little information available on the participation of female-owned businesses in government contracting. Information obtained in staff interviews suggests, however, that the participation of women in direct competitive procurement is less than that of minorities.[24] Of 41 female entrepreneurs interviewed (20 minorities and 21 whites), only 8 have been awarded government contracts. None has been awarded a contract through the competitive bidding process though 26 of the 41 female entrepreneurs indicated that their firms regularly bid for Federal contracts.

SBA reports on the 8(a) program provide the only data on contracts awarded to firms owned by women, but the data are limited in that only contracts awarded through the 8(a) subcontracting program are recorded. The Commission identified only 38 female-owned firms approved for the 8(a) program out of a total of 1,780 (mostly minority), with all but 1 of the female-owned firms being owned by minority females.[25] These 38 female-owned firms received only $3 million out of a total of $153 million in 8(a) contracts in FY 1972.[26]

The 10 Federal agencies surveyed by the Commission reported that they did not collect data on competitive contracts awarded to women.[27]

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24. The Commission's sample was selected from SBA reports: Firms Approved for 8(a) Contract Assistance (1972); and Status Report of 8(a) Contracts (1972). A list of female-owned firms compiled by Wanda Banks Associates was also used. For a description of the basis for selecting firms and the size of firms whose owners were interviewed, see appendix A.

25. SBA does not classify contractors or contracts by the sex of the firm's owners. The Commission compiled its lists by inspection of owners' names, verified by telephone and cross checks with other lists.

26. Tabulated from Status Report of 8(a) Contracts (1972).

27. Only 6 of the 10 agencies responded to questions about female-owned firms. The Department of Defense, the Department of Housing and Urban Development, the Postal Service, and the Environmental Protection Agency did not respond.

The response of the General Services Administration (GSA) is typical:

> Overall data on the number of competitive contracts awarded to women is not available at this time. The sex of the owners of businesses who received Federal contracts is not recorded in all instances and, if it were available, compilation of the data would require extensive time due to the large number of contracts. 28

This lack of data and the absence of procedures for collecting information on contracts awarded to women are indicative of the low priority Federal agencies have assigned to female business development.

One indication of Federal interest in women as contractors was brought to the attention of the Commission; an HEW contract was awarded by the Women's Action Program to determine the extent to which women have been successful bidders at HEW. [29] Although HEW has awarded numerous contracts for the evaluation of programs affecting women, only $28 million or 5 percent of HEW's FY 1972 contracting was identified as having been awarded either to firms owned by women or to projects directed by women. The study neither distinguished firms owned by women from firms owned by men which employed women as project directors, nor cross-classified female-owned firms by race or ethnicity because such data were not available.

CHARACTERISTICS OF FEMALE-OWNED FIRMS

Female-owned firms, like minority-owned businesses, are limited in their participation in government contracting by their number, industrial distribution, and size. Although the Bureau of the Census, in cooperation with OMBE, conducted a comprehensive survey of minority firms, their data do not distinguish between minority male and minority female-owned firms. A similar effort to collect information on firms owned by women has not been undertaken. The limited data available,

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28. Janice K. Mendenhall, Federal Women's Program Coordinator, General Services Administration, letter to Martin Sloane, Assistant Staff Director, Office of Program and Policy Review, U.S. Commission on Civil Rights, received May 1, 1973.

29. See "A Study of the Extent to Which Women's Firms Have Been Involved in Evaluating DHEW Programs," prepared by Wanda Banks Associates, Contract No. (SB 3-2-08 (a) 73-C153) (June 20, 1973).

such as on firms certified for the 8(a) program or on those receiving SBA loans, suggest that the number of firms owned and actively controlled by women is quite small and that their economic impact is negligible.

While an analysis of female-owned firms receiving SBA loans in FY 1974 may not represent a scientific sampling of such firms, it does shed some light on the type and nature of firms owned by women. Based on the SBA data, these firms are heavily concentrated in the wholesale and retail classification (58.8 percent), which seldom provides goods and services purchased by the Federal Government. (See table 4).

TABLE 4. INDUSTRIAL CLASSIFICATION OF FEMALE-OWNED BUSINESSES RECEIVING SMALL BUSINESS LOANS, FISCAL YEAR 1974

Classification	Number	Percent
Transportation and Communications	49	2.5
Construction	37	1.9
Manufacturing	156	8.0
Wholesale and Retail	1,143	58.8
Finance, Real Estate, and Insurance	9	0.5
No Classification	8	0.4
Selected Services	520	26.7
Miscellaneous	24	1.2
Total	1,946	100.0

Note: Based on 1946 female-owned firms receiving loans from SBA during FY 1974. Female-owned firms have not been identified by race or national origin.

Source: Information provided by SBA, Division of Reports Management, Richard J. Sodoski, Director, Reports Management Division, letter to James B. McDaniel, Project Director, Office of Program and Policy Review, U.S. Commission on Civil Rights, Jan. 16, 1975.

Firms owned by women also tend to be concentrated in industries characterized by their small size and low gross receipts. For example, 753 or 38.6 percent of the 1,946 female-owned firms receiving SBA loans in FY 1974 were in six industries in which the size and average gross receipts are generally small. (See table 5.)

TABLE 5. ANNUAL AVERAGE PROFITS FOR SIX SELECTED RETAIL BUSINESS CATEGORIES IN WHICH FEMALE-OWNED BUSINESSES TEND TO BE CONCENTRATED

	Percentage of Female-Owned Firms in the Industry	Annual Average Gross Receipts	Annual Profit* Percentage	Annual Average Margin for Salary and Reinvestment
Restaurants	12.5%	$60,000	11.13%	$6,678
Gift and Novelty Shops	2.9	30,000	14.04	4,212
Clothing Retail	11.7	30,000	16.71	5,013
Beauty Shops	5.6	25,000	19.41	4,672
Variety Stores	1.0	35,000	12.49	4,371
Grocery Stores	4.7	150,000	5.49	8,235

Source: Data on concentration of female-owned businesses are based on U.S., Small Business Administration, "Loan Approvals to Women--FY 1973." Data on average gross receipts and profit percentage are based on information found in, Accounting Corporation of America, Barometer of Small Business, vol. 23 (March 1972). (The statistical base for the average is based on a survey conducted by the Accounting Corporation of America in 1971. The survey covered 1,336 restaurants, 64 gift and novelty shops, 75 variety stores, and 1,305 grocery stores.)

*Before Owner's Salary.

A significant number of female-owned firms, however, are in research consulting and miscellaneous services, which are likely to provide services purchased by the Federal Government.[30] These firms also are likely to have developed some expertise and capital resources and are, therefore, likely prospects for agencies seeking to increase Federal purchases from firms owned by women.

30. Over 50 percent of the 38 female-owned businesses participating in the 8(a) program are concentrated in services industries. This may be due, in part, to the type of firms acceptable for 8(a) participation. Retail firms are discouraged unless a concession opportunity is available.

Chapter 3

LIMITS COMMON TO MINORITY AND FEMALE-OWNED FIRMS' PARTICIPATION IN GOVERNMENT CONTRACTING

Marketing [31] for government contracts is a very competitive business, and firms bidding for government contracts should have adequate working capital, a competent marketing staff with a thorough knowledge of Federal contracting practices, and knowledge of contracting opportunities in order to be successful. Without these resources, firms are greatly hampered in obtaining Federal contracts. Minority and female-owned firms, as will be pointed out later in this report, do not have these resources, according to minority and female entrepreneurs interviewed by the Commission's staff.

In addition, Federal contracting procedures and practices also represent obstacles impeding both minorities and women from obtaining government contracts. Government contracting methods allow contracting officers considerable subjectivity in selecting firms with which to do business. Therefore, the attitudes and willingness of these officers to accept minority and female-owned firms as contractors are crucial factors in their participation in government contracting. The degree of representation of minorities and women in policymaking positions in government contracting, similarly, may have a decisive influence in the selection process.

GOVERNMENT CONTRACTING PROCEDURES AND PRACTICES

There are three basic procedures for awarding Federal contracts; (1) formal advertising with competitive bidding, (2) negotiation with

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31. "Marketing" refers to: (1) familiarizing Federal technical representatives and contracting officers with the capabilities of the firm; (2) learning as much as possible about contracting opportunities offered by a particular agency, in general, and of imminent contracting opportunities, in particular; and (3) preparing and submitting bids or proposals to Federal agencies as requested.

competing firms, and (3) negotiation without competition (sole source).[32]

The formal advertising procedure consists of synopsizing procurement needs in the Commerce Business Daily[33] and issuing invitations to bid. Interested firms then submit offers indicating their price for providing the designated supplies or services. The contract is thereafter awarded to the lowest "responsive" and "responsible" bidder. The determination of responsiveness is made on the basis of the bidder's written commitment to the terms and conditions of the invitation for bid (IFB). This determination is made entirely on the basis of the documents submitted by the bidder. The determination of whether a bidder is "responsible" is based on judgments of the bidder's capability and capacity to fulfill contractual obligations.[34] Information relating to this determination can be obtained after the bid opening. Contracts awarded on the basis of formal advertising are for a fixed price, with the contractor bearing the risk of loss in the event of an error in calculating costs, delays, or hardships encountered in producing the goods or providing the services required by the contract.

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32. Two statutes control purchasing in the Federal sector. The Armed Services Procurement Act of 1942 (ASPA), 10 U.S.C. 2301-2314; 50 U.S.C. 403(c) (1970); and the Federal Property and Administration Services Act of 1949 (FPASA), 41 U.S.C. 251-260 (1970). ASPA governs the purchasing policies of the Department of Defense and the National Aeronautics and Space Administration. FPASA governs the purchasing policies of all other agencies. The Postal Service, which is an independent corporation pursuant to the Postal Reorganization Act, P. Law 91-375, has its own procurement manual, issued Oct. 8, 1971.

33. Synopsizing is the process of publishing a description of the items or services to be purchased and providing information on bid forms, due dates, and time and place of bid openings. The Commerce Business Daily is a Department of Commerce publication that list invitations to submit bids and proposals and notices of contract awards. See 41 C.F.R. § 1-1.1003-1; 32 C.F.R. 8.

34. See 41 C.F.R. 1-1.12.

The statutes governing Federal procurement require formal advertising, as it is considered to be the fairest and most economical means of purchasing. Numerous exceptions are permitted.[35] In those cases where an exception to formal advertising is permitted, contracts may be awarded through the competitively or noncompetitively negotiated procedures. Though it is not viewed favorably by the General Accounting Office, a substantial portion of all Federal contracts is awarded through negotiation procedures.[36]

Competitively negotiated procurements are also synopsized in the Commerce Business Daily, in which the requests for proposals (RFP) are described and due dates for responses stated. In addition to the publication in Commerce Business Daily, agencies select firms to whom they issue requests for proposals. The list of firms to receive RFP's may be compiled from a number of sources, including agency bidders' lists, commercial directories, and suggestions from technical representatives.[37] In competitively negotiated procurements, cost estimates are submitted with the proposals, but technical requirements may be given greater consideration in the selection process.

Contracts cannot be negotiated unless they fall within the exceptions permitted by the Federal Property and Administrative Services Act or the Armed Services Procurement Act. Generally, however, contracts

35. The Federal and Administrative Services Act permits 15 exceptions, 41 U.S.C. 525(c), while the Armed Services Procurement Act permits 17, 10 U.S.C. 2304(a).

36. The Commission on Government Procurement reported that in FY 1972, 58.6 percent of reported DOD military procurement dollars involved sole source contracts. Report on Government Procurement, vol. 1, p. 26.

37. Technical representatives are the agency program officials for whom the goods or services are being purchased. Generally, a technical representative works in tandem with the contracting office. In negotiating procurements, technical representatives' evaluations of prospective contractors will usually be decisive, since they are familiar with the technical requirements of the work to be performed.

for research and development are negotiated, [38] while contracts for construction and materials and supplies are purchased through formally-advertised procurements.

Sole source contracts are negotiated without any competition and are justified on the grounds that, in a given situation, there is no reasonable alternative but to seek an offer from a specific firm. This is usually because of "...urgency, lack of a reasonable competitive source, standardization, or other factors ... This is particularly true of DOD, NASA, and AEC, where costly, highly technical items are frequently needed." [39] These three agencies accounted for $43.2 billion or over 70 percent of the $57 billion in contracts awarded by the Federal Government in FY 1972. [40]

In negotiated contracts, considerable latitude is given contracting officers and technical representatives in selecting firms with which to negotiate and in deciding whether a given firm is capable of performing according to the terms of the contract. RFP's usually state that contracts will be issued to the "most advantageous offers to the government, price and other factors considered." Contracting officials must often rely on their judgment in determining which offers are advantageous to the government and in deciding which firms are capable of performing. Because of the considerable latitude given these officials, particularly in selecting sole source contractors, the attitudes of contracting officers and technical representatives toward minority and female-owned firms are crucial factors in determining whether or not they are given serious consideration.

38. See 41 C.F.R. 1-1.12.

39. Report on Government Procurement, vol. I, p. 26.

40. U.S., Office of Management and Budget, The U.S. Budget in Brief, Fiscal Year 1973, appendix I. See also, table 8, "Budget Receipts and and Outlays. 1789-1972." For additional information see Report on Government Procurement, vol. 1, p. 3.

Attitudes of Federal Contracting Specialists

Commission interviews were unsuccessful in securing information on the attitudes of contracting specialists toward female-owned firms. Contracting specialists suggested that their total or near total lack of experience in dealing with such firms would not support generalizations regarding their characteristics.[41]

Considerably less restraint was exercised in comments on minority firms. The nature and intensity of remarks by several contracting specialists against minority firms, generally, and socioeconomic programs left little doubt that their attitudes toward female-owned firms might be similarly biased. Statements made by several contracting officers indicate that they may not exercise their discretion in favor of minority businesses in evaluating the capabilities of prospective contractors. Since contracting officers have a great deal of latitude in the evaluation of bids submitted by construction firms, as well as in the preaward surveys of manufacturing firms, nonprofessional organizations, and service organizations, their baises may surface at this point.[42]

Regardless of the objective qualifications of a firm, if the contracting specialist believes it to be incapable, it will not be accepted as a contractor. A few contracting officers, interviewed by the Commission staff, expressed a belief that minority firms are inefficient, sloppy, lacking in business acumen and knowledge of government processes, or are "just a lot of extra bother." When queried about an agency's efforts to

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41. Comments on attitudes towards minority and/or female-owned firms were made in response to questions requesting an evaluation of the potential of these firms for government contracting and their views of problems minority and female-owned firms faced during contract administration. For a detailed description of the data collection methodology, see appendix A.

42. Preaward surveys are examinations of the contractor's financial records, management systems, and production facilities to determine whether a contractor is capable of performing in a timely manner. In civilian agencies, the preaward survey is conducted by a team consisting of contracting specialists and, occasionally, a technical representative. DOD surveys are conducted by the Defense Contract Administration Services.

assist minority firms, one procurement officer confided, "A lot of minority firms are like leeches. They don't want to go out on their own and do a little hard work." He felt that special programs to aid minorities were tantamount to "government handouts." Another contracting officer who was interviewed believed that "coddling" was needed when dealing with minority firms. "It takes extra time and care to deal with minority firms, and a contracting officer shouldn't have to be a counselor," said one officer.

The negative and sometimes hostile attitudes of government contracting specialists are reinforced by the belief that "socioeconomic" considerations hamper the procurement process. In a typical procurement, the contracting officer has to complete numerous tasks before a contract is awarded including: synopsizing the invitation for bids or request for proposal; checking all bids for terms, conditions, and mistakes; calculating prices and discounts; and conducting preaward surveys. Federal procurement officers invariably consider the needs of their agencies to be their first obligation. "Getting the job done comes first," they say. Special efforts to aid minorities and women may be important, but as one procurement official put it, "each social program denigrates the procurement programs." [43] Since the primary objective is to find the lowest responsive and responsible bidder, or the most advantageous offer, the demands of seeking out and utilizing minority or female firms are regarded as counterproductive by many contracting specialists interviewed by Commission staff. [44]

Whatever the actual extent of hostility toward and mistrust of minority or female-owned firms, minority and female entrepreneurs believe that it is widespread. Of the 125 entrepreneurs interviewed, 44.8 percent felt that Federal contracting officers impose more stringent criteria on minority and female businesses during the bidding and

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43. There are 39 socioeconomic programs implemented through Federal contracting programs. See, Report on Government Procurement, vol. I, table 1, pp. 114-15.

44. Ibid. pp. 111-24.

selection process. They also cited strict preaward survey procedures and requirements of rigid compliance with all terms in the contract as expressions of biases, which they felt limit their participation as Federal contractors.

Minorities and Women as Contracting Officers

Data provided by the Civil Service Commission clearly show that minorities and women are poorly represented in those government contracting positions that would permit them to influence policy decisions and to select contractors. Table 6 shows the number and percentages of minority and female contracting specialists in nine Federal agencies.

TABLE 6. THE NUMBER AND PERCENTAGES OF MINORITIES AND WOMEN EMPLOYED AS FEDERAL CONTRACTING SPECIALISTS IN NINE SELECTED AGENCIES (MAY 1973)

GS		Minorities		Women		Minority Women*	
Grades	Total	Number	Percentage	Number	Percentage	Number	Percentage
5 - 8	1,882	267	14.2	1,042	55.4	186	9.9
9 -12	9,416	751	7.9	2,581	27.4	367	3.9
13 -15	2,774	85	3.1	121	4.4	9	0.3
16 -18**	20	-	-	-	-	-	-
Totals	14,092	1,133	7.8	3,744	26.6	562	3.9

* Minority women are also counted in the two other categories: Minorities and women.

** All supergrades are in the Department of Defense.

Source: U.S. Civil Service Commission's Bureau of Manpower Information Systems, compiled at the request of the U.S. Commission on Civil Rights. All data were classified according to agency, sex, race, and grade and reflect employment as of May 1973. The nine agencies included were the Departments of Defense; Transportation; Housing and Urban Development; Labor; Agriculture; and Health, Education, and Welfare; the Veterans Administration; Environmental Protection Agency; and the General Services Administration. For a more detailed analysis of the data see appendix B.

Federal contracting specialists are mostly white male career officers. No minorities or women hold supergrades and they are poorly represented in grades 13 through 15. They are proportionately better represented in grades 9 through 12, but even more so in grades 5 through 8. (For a more comprehensive analysis of these statistics by race, sex, grades, and agencies, see appendix B).

MARKETING PROGRAMS

Since most minority and female-owned firms have relatively low gross receipts, their marketing burdens are greater than those of small but established, predominantly white, male firms. Measured by their small share of Federal contracts, the marketing programs of minority and female-owned businesses, by and large, have not been successful.

Contracting officers or representatives of minority business development organizations interviewed by Commission staff identified 10 problems likely to hamper small new firms seeking government contracts. These limitations were confirmed through interviews with minority and female entrepreneurs.[45] (See table 7.)

Responses given most frequently by interviewees reflect deficiencies for both minorities and women in three general areas: working capital, knowledge of future bidding opportunities, and preselection before the formal advertising process. Female interviewees indicated that an inadequate marketing staff is also a major problem for them, but generally they attributed their marketing staff problems to insufficient working capital.

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45. The problem areas were identified by 30 government contracting officers and representatives of minority business development organizations. Subsequently, 110 minority and female entrepreneurs in California, New York, Pennsylvania, Colorado, Washington, D.C., and Illinois, selected from lists of minority and female-owned firms maintained by SBA and OMBE, were asked to indicate the major obstacles to their obtaining government contracts. An additional 15 female entrepreneurs were interviewed by telephone on a nationwide basis.

TABLE 7. TEN PROBLEMS ENCOUNTERED IN MARKETING FOR FEDERAL CONTRACTS

Nature of Problem	Entrepreneurs Identifying Factor as a Major Obstacle			
	Male Minority		Women	
	Number	Percent	Number	Percent
Insufficient Working Capital	45	53.5	21	51.1
No Knowledge of Future Bidding Opportunities	35	41.6	24	58.5
Preselection Before the Formal Advertising Process	22	26.1	13	31.7
Inadequate Marketing Staff	17	20.2	13	31.7
Overbidding	20	23.8	4	9.7
Inadequate "Track Record"	12	14.2	6	14.6
Bonding	15	17.8	0	0.0
Understanding Government Contracting Regulations	14	16.6	1	2.4
Preparation of Bids and Proposals	11	13.0	5	12.1
Inadequate Staff	7	0.8	4	9.7

Note: There were 84 minority males, 20 minority women, and 21 non-minority women in the sample. For a comprehensive description of the firms interviewed see appendix A.

Source: Tabulated from data recorded by Commission staff.

The Availability of Working Capital

More than half of the entrepreneurs identified insufficient working capital as a major obstacle to their establishing effective marketing programs and obtaining government contracts.

Working capital in the form of credit and retained earnings is essential for the operation of any business. In fact, credit provides an increasing portion of the working capital for all businesses. The percentage of corporate financing provided by credit increased from 38.3 percent in 1959 to 57.7 percent in 1969. The percentage of corporate financing provided by retained earnings, on the other hand, decreased from 52.5 percent to 34.9 percent during the same period. [46]

46. See U.S., Council of Economic Advisers. Economic Report of the President (1971), p. 286.

Difficulties in obtaining adequate working capital encountered by minorities and women entrepreneurs are more severe than those of their white male counterparts. This was documented for minority businesses in a study funded by the Office of Economic Opportunity and the Department of Commerce.[47] Sex discrimination in granting mortgage financing and consumer credit has also been well documented.[48] From all indications, however, women have even more difficulty in obtaining business loans. Over 51 percent of the female entrepreneurs interviewed by Commission staff indicated insufficient working capital as their major problem. For instance, in FY 1974, SBA loaned 27,485 firms a total of nearly $2 billion, but female-owned firms, most of which are believed to be small retail businesses, received 1,946 loans totaling $90,287,000. This amounted to 4.6 percent of SBA's total loans for that fiscal year.[49]

It is unlikely that a significant number of minority and female entrepreneurs can acquire the working capital they need for business operations and expansion through earnings or investments. Therefore, commercial credit is vital to minority and female business development.

Limits of Federal Loan Programs. Federal loan programs for minority firms have been directed more toward retail and service-oriented businesses than toward those having a high probability of obtaining Federal contracts. Only 15 out of 433 minority small business loan recipients

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47. See report of the President's Advisory Council on Minority Business Enterprise, Minority Enterprise and Expanded Ownership, Blueprint for the 70s (1971) appendix B, p. 39. The study, which surveyed minority manufacturers, revealed that only 38.2 percent had established lines of credit with banks and obtaining credit was a problem encountered by 48.3 percent of such firms.

48. See U.S., Commission on Civil Rights, Mortgage Money: Who Gets It? (1974) (hereinafter cited as Mortgage Money: Who Gets It?); National Commission on Consumer Finance, Hearings on Sex Discrimination (Washington, D.C., May 22-24, 1972) (hereafter cited as Hearings on Sex Discrimination); and U.S., Congress, Joint Economic Committee, The Economic Problems of Women, 93rd Cong., 1st Sess., 1973 (hereafter cited as Economic Problems of Women, 1973).

49. SBA's tabulation of "Loans to Women" provided to the Commission by the Reports Management Division of SBA.

surveyed by the General Accounting Office were government contractors and more than half of the recipients were retail or wholesale businesses.[50]

The potential effectiveness of government loan programs for minority businesses also is hampered by SBA's tendency to lend much less than is needed. For example, the average small business loan to minority firms in FY 1973 was $11,322,[51] and SBA's average equal opportunity loan to minority firms was only $5,000 for the same year.[52] Yet the probable failure rate for firms receiving loans of less than $25,000 is approximately 65 percent, according to the General Accounting Office. Therefore, even after receiving SBA loans, minority entrepreneurs may not have sufficient working capital to survive, much less conduct vigorous marketing programs.

Information on Contracting Opportunities. Many minority and female entrepreneurs indicated that they do not receive adequate information to submit timely, responsive bids. Forty-one percent of the 84 minority males and 58.5 percent of the 41 females interviewed by the Commission stated that they lacked knowledge of future bidding opportunities.

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50. U.S., Comptroller General, Report to the Congress: Limited Success of Federally Financed Minority Businesses in Three Cities, B-149685, SBA-OMBE (1973). (Hereafter cited as Limited Success of Federally Financed Minority Businesses.)

51. Small business loans are authorized by the Small Business Act of 1953 as amended (15 U.S.C. § 636, 72 Stat. 387). During FY 1973, minority firms received 3,285 loans totaling $200.9 million. (See Limited Success of Federally Financed Minority Business, p. 7.)

52. Equal opportunity loans are authorized by the Equal Opportunity Act of 1964 as amended in 1967 (42 U.S.C. § 2901, 78 Stat. 526), and administered by SBA. These loans assist businesses owned by low-income applicants or businesses located in areas of high unemployment. Loans cannot exceed $50,000. Minority firms received 5,557 equal opportunity loans totaling $110 million in FY 1973. (See Limited Success of Federally Financed Minority Businesses, p. 11).

Federal agencies rely on the Commerce Business Daily and agency bidders' lists as the chief and, in most cases, exclusive means of publicizing their competitive procurement needs. However, many minority and female entrepreneurs interviewed were not familiar with the Commerce Business Daily and those who subscribed to it indicated that they did not find it particularly helpful. The bidders' lists are used to solicit bids or proposals on competitively negotiated contracts from a limited number of firms that have submitted their qualifications. Each agency maintains its own list and there is little exchange of information between agencies.

If minority and female firms reviewed the Commerce Business Daily and submitted qualification statements to Federal agencies, they would still not have access to all contracting opportunities, since a large portion of Federal procurement needs are met through sole source contracts without competitive bids.[53]

Sole source contracting opportunities are not advertised in the Commerce Business Daily and no notice is given to other qualified firms on agency bidders' lists. Moreover, contracting officers and technical representatives tend to select familiar, established, and experienced firms, thus excluding most minority and female-owned businesses from sole source contracts. The firms that are most successful in obtaining government contracts have full-time government representatives to seek bidding opportunities. Firms that cannot afford "government watchers" are not as adequately informed.

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53. According to information supplied to the Commission by GSA, over 50 percent of its FY 1973 procurements were through sole source contracts, and the Government Procurement Commission estimated that 58.6 percent of DOD's FY 1972 procurements were by sole source, Report on Government Procurement, vol. 1, p. 26.

Preselection Before Formal Advertising. Even when procurement needs are formally advertised and competitively negotiated, many minority and female entrepreneurs believe that contractors are often selected before the procurements are advertised. Approximately 26.1 percent of the minority males and 31.7 percent of the women interviewed by Commission staff stated a belief that contractors are selected before the contracts are formally advertised. (See table 7.)

No specific cases to support such allegations were brought to the attention of Commission staff. In fact, it is virtually impossible to extend preferred treatment to selected firms in formal advertising, as the contracts are awarded to the lowest responsive and responsible bidders. When queried closely on this point, entrepreneurs usually referred to the evaluation of proposals that are submitted in negotiated procurements as opposed to formal advertising. And in most cases they were referring to preferences being given by the technical representatives who, according to interviewees, may give advance information to favored firms or may request that contracting officers limit the time given firms to respond to the IFB. Here again, no specific cases to support their allegations were brought to the attention of Commission staff.

In conclusion, the capacity of minority and female-owned firms to take advantage of the market provided by Federal contracting is limited by a combination of factors, including the nature of Federal purchases and the industrial distribution of minority and female-owned firms. Procurement procedures and contracting officers' attitudes as well as operating problems of disadvantaged firms reinforce those basic obstacles.

Chapter 4

THE COORDINATION OF SPECIAL FEDERAL CONTRACTING PROGRAMS AND THE PARTICIPATION OF WOMEN

THE COORDINATION OF SPECIAL FEDERAL CONTRACTING PROGRAMS

Three Executive orders directed the implementation of the Minority Enterprise Program, which includes SBA's 8(a) subcontracting program,[54] the minority subcontracting program, and the Buy Indian Program.[55] Executive Order 11458 directed the Secretary of Commerce to mobilize and coordinate activities "which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise."[56] The order authorized the establishment of the Office of Minority Business Enterprise (OMBE) in the Department of Commerce to oversee and coordinate the program.

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54. Information provided by SBA indicates that the section 8(a) program, authorizing the Administrator of SBA to contract with Federal agencies and subcontract with small businesses to deliver the requirements of the contract (15 U.S.C. 637(a)), lay dormant until 1967. It was then included as an additional mechanism in the program of the Johnson administration to deal with hard-core unemployment. The transformation of the 8(a) program to a business assistance program resulted from the impetus of the Nixon administration's Minority Enterprise Program. Donald W. Farrell, Associate General Counsel, SBA, letter to James B. McDaniel, U.S. Commission on Civil Rights, Feb. 7, 1973.

55. Other special contracting programs that are not specifically part of the Minority Enterprise Program include the small business set aside authorized by the Federal procurement regulations, 41 C.F.R. Sec. 1-1.702 (b) and the labor surplus set-aside contracts, 29 C.F.R. sec. 8.

The small business program directs Federal agencies to set aside all or portions of certain contracts and restricts competition to small business concerns as defined by the procurement regulations. Since minority and female-owned businesses must compete with small but experienced, white male firms, the small business set-aside program has provided minimal assistance to the Minority Enterprise Program.

The labor surplus regulation directs Federal agencies to negotiate portions of contracts with firms located in areas of concentrated unemployment. Since these include all areas with unemployment of 6 percent of more, areas that qualify for public service employment, and Indian reservations, most areas with large concentrations of minority businesses have been classified as areas of concentrated unemployment. The program, however, has not been widely used to aid small businesses in general.

56. Executive Order 11458 (Mar. 5, 1969), 3 C.F.R. 779.

The Interagency Committee on Minority Enterprise

The Interagency Committee on Minority Enterprise is composed of subcabinet-level officials from each Federal agency. It has created five task forces to examine different aspects of minority business development. The most important is the Interagency Task Force on Government Procurement, which is made up of procurement officials and 8(a) program officers of major Federal agencies and is chaired by the Commissioner of GSA's Federal Supply Services.

The task force on procurement is responsible for developing policies to expand Federal contracting opportunities for minority firms within the full scope of the Minority Enterprise Program. It regularly reviews procurement regulations and special contracting programs and serves as a coordinator and a forum for the exchange of information among government officials concerned with minority procurement activity. The task force also has developed minority subcontracting regulations.

Office of Minority Business Enterprise

OMBE is the chief coordinator for the Minority Enterprise Program. Its responsibilities include: (1) coordinating Federal procurement with minority firms, (2) promoting mobilization of State and local resources for aiding minority enterprise, (3) serving as a data collection center and an information bureau, and (4) funding organizations to provide training and technical assistance for minority entrepreneurs and conducting special pilot demonstration projects. [57]

In order to carry out its responsibilities, OMBE is authorized to: (1) develop comprehensive plans and specific program goals for the Minority Enterprise Program; (2) review and coordinate Federal training and technical assistance programs designed to aid minority businesses; (3) advise Federal officials, private sector representatives, and State and local government representatives on how to comply with program regulations; (4) provide the impetus and organizational framework for joint Federal undertakings; and (5) recommend legislative and executive

57. Executive Order 11458 (Mar. 5, 1969), 3 C.F.R. 779, as amended by Executive Order 11625 (Oct. 13, 1971), 3 C.F.R. 779.

actions. The President has directed other Federal agencies to cooperate with the Secretary of Commerce in the performance of these functions. [58]

OMBE's major responsibility with respect to special contracting programs is to fund organizations that will provide technical assistance to participating firms. In line with this responsibility, OMBE has funded 150 business development centers, minority trade associations (such as the Minority Manufacturers and Contractors Associations), and 13 State OMBE's [59] with an annual budget of $65 million. [60] In the past, however, OMBE-funded programs have not placed particular emphasis on developing procurement opportunities or assisting government contractors but have tended to provide more help to firms seeking financial assistance by aiding them in the preparation of loan applications and negotiations with local banks. Lately, these programs have begun to place more emphasis on marketing assistance.

The Small Business Administration

Executive Order 11518 directed SBA to "particularly consider the needs and interests of minority-owned small business concerns and of members of minority groups seeking entry into the business community" in its programs and dealings with other agencies of the Federal Government. [61]

In carrying out this responsibility, SBA administers the 8(a) subcontracting program and assumes a major role in providing financial assistance through its small business and equal opportunity loan programs. [62] SBA's role in the administration of the 8(a) program is discussed at length in chapter 5.

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58. Ibid.

59. State OMBE's have been funded in California, Delaware, Illinois, Kentucky, Massachusetts, Michigan, New York, Ohio, South Carolina, Tennesse, Texas, and Virginia.

60. See Budget of the United States Government, FY 1975, Appendix, p. 240.

61. Executive Order 11518 (Mar. 21, 1970), 3 C.F.R. 907.

62. See footnotes 51 and 52 for a discussion of the small business and equal opportunity loan programs.

THE PARTICIPATION OF WOMEN IN SPECIAL CONTRACTING PROGRAMS

Female-owned firms, as previously indicated, have extremely limited access to Federal contracting opportunities. There are no business development programs for nonminority women, although eligibility to participate in the special contracting programs, which are directed toward minority business development, is being debated between women's action groups and SBA.

The national policy and the special contracting programs are directed toward minority business development. However, the language defining eligibility (or target groups) is not restricted to minority groups and suggests that others, in fact, may be eligible for special programs.

Both the Small Business Administration and the Office of Minority Business Enterprise use the term "socially or economically disadvantaged" to describe the class of persons to whom the special programs are directed.[63] The language suggests that minority persons are presumptively eligible for participation, but that the programs are not restricted to minorities. SBA officials maintain that each case is determined on its merits, while, in practice, minority entrepreneurs are presumed to be eligible.

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63. SBA states that social or economic disadvantage "may arise from cultural, social, chronic economic circumstances or background, or other similar cause. Such persons include, but are not limited to, Black Americans, American Indians, Spanish Americans, Oriental Americans, Eskimos, and Aleuts. Vietnam-era service in the Armed Forces may be a contributing factor in establishing social or economic disadvantage." 13 C.F.R. 124.8(c) (1).

Similarly, the Executive order authorizing the Minority Enterprise Program defines a minority business enterprise as "a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background, or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish speaking Americans, American Indians, Eskimos, and Aleuts." Executive Order 11625 (Oct. 13, 1971).

Firms owned by minority women are eligible for participation in the special contracting programs on the same basis as firms owned by minority men, but their participation has been limited. Although SBA does not classify its listed firms by the owner's sex, the Commission identified 38 female-owned firms in the 8(a) program (8 of which had received contracts), including 3 firms owned by Indian women that are also eligible for the Buy Indian program. Only one of the firms was owned by a white female. The limited participation of minority-female-owned firms may be attributed to several factors, including the limited number of identifiable minority-female-owned firms and the apparent concentration of female-owned firms in industries with little or no potential for government contracting.

Though women as a class have been the victims of economic discrimination, particularly in employment and access to credit, [64] the special contracting programs are not readily available to nonminority women. As of the end of FY 1972, only one white woman had been approved for the 8(a) program (after demonstrating a physical disability); the rest of the female participants were minority women who had been approved because they were minorities.

The policy that white women, as a group, are not deemed eligible for participation in the 8(a) program is an administrative policy, not dictated by statute. Since the U.S. Court of Appeals for the Fifth Circuit has upheld SBA's broad discretion to determine the nature and scope of the 8(a) program and define the class of businesses eligible to participate, [65] it is within the discretion of the Administrator of

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64. Economic discrimination against women in employment and credit has been documented. See Hearings on Sex Discrimination; Economic Problems of Women, 1973; and Mortgage Money: Who Gets It? See also Herbert Stein, "Women's Second Economic Revolution," Ladies Home Journal, October 1972, p. 28, and generally, chapter 4 of U.S., Council of Economic Advisors, Economic Report of the President (1973).

65. Ray Baille Trash Hauling, Inc. v. Kleppe, 477 F2d 696 (5th Cir., 1973) Cert. denied. Feb. 19, 1974, 415 U.S. 914.

SBA to decide whether women as a group are "socially or economically disadvantaged" for the purpose of participating in the 8(a) program. Despite the recent enactment of anti-sex-discrimination legislation as an amendment to the Small Business Act,[66] SBA's position is that women as a group are not eligible though individual women may be.[67] SBA officials assert that assisting the development of female-owned businesses is not the current national policy.

Since neither SBA nor OMBE policy includes nonminority women, as a group, in their programs (OMBE programs are specifically directed towards minorities) and the remainder of Part I of this report deals with operating procedures and effectiveness of the Federal special contracting programs for minorities, female-owned firms will be mentioned infrequently throughout the rest of this part.

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66. 15 U.S.C. § 633(b) et seq. The Small Business Act as amended by P. Law 93-237 (1973) prohibits discrimination on the basis of race and sex in the granting of loans.

67. See testimony by SBA Administrator Thomas Kleppe, in U.S., Congress, House of Representatives, Permanent Select Committee on Small Business, Subcommittee on Minority Small Business Enterprise and Franchising, Hearings, Government Minority Enterprise Programs--Fiscal Year 1974, 93rd Cong. 1st sess., 1973, vol. I, p. 16. (Hereafter cited as Government Minority Enterprise Programs--FY 1974).

Chapter 5

THE 8(a) SUBCONTRACTING PROGRAM

The 8(a) program is the largest Federal contracting program for minority business, subcontracting an estimated $153 million in procurement in FY 1972.[68] SBA, which is authorized by section 8(a) of the Small Business Act of 1953[69] to contract with Federal agencies to provide goods and services, in turn subcontracts with small businesses owned by "socially or economically disadvantaged" persons.[70] The rationale behind the program is that SBA will provide technical and managerial assistance that, along with noncompetitive contracting, will aid these firms in developing the skills necessary to compete successfully in both the public and private sectors. Thus, it was envisioned as a business training as well as a procurement program.

The SBA has reported that the section 8(a) contracting authority lay dormant until late 1967, when it was partially implemented as a demonstration project by the Johnson administration to deal with hard-core unemployment.[71] The transformation of 8(a) from a demonstration project to an ongoing program in 1970 came with the impetus of President Nixon's establishment of the Minority Enterprise Program. Its implementation was based on a legal review undertaken by the General Counsel of GSA for the Interagency Task Force on Government Procurement, which concluded that section 8(a) was "the only satisfactory legal authority

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68. Contracts awarded to 8(a)-approved firms had increased to $272.1 million in FY 1974.

69. 15 U.S.C. 637(a).

70. 13 C.F.R. 124.8.

71. Donald W. Farrell, Associate General Counsel, SBA, letter to James B. McDaniel, U.S. Commission on Civil Rights, Feb. 7, 1973.

upon which to base a continuing government-wide program designed to give minority business a preference in procurement." [72]

The 8(a) program provides one of the few mechanisms through which Federal procurement activities are coordinated and monitored. It is conducted jointly by SBA and all procurement offices in the Federal Government, with SBA contracting with the Federal agencies and, in turn, subcontracting with 8(a)-approved firms. Simply stated, Federal agencies provide the contracts and SBA provides the contractors and awards the contracts. The responsibility for administering these contracts is delegated by SBA to the appropriate agencies. However, SBA maintains contact with 8(a) contractors as a result of their continued participation in the program.

The responsibilities of SBA and agency program officials include: (1) approval by SBA of firms eligible for participation; (2) selection by an agency of procurements for possible purchase through the 8(a) program; (3) the match by SBA of a contract to an approved contractor; (4) negotiation and award by SBA of an 8(a) subcontract; (5) negotiation of a contract between SBA and a Federal agency; (6) negotiation and award by SBA of an 8(a) subcontract; (7) administration by the agency or its agent of the 8(a) contract; (8) provision by SBA and OMBE of financial, technical, and management assistance; (9) continuing review by SBA of the progress of the 8(a) contractor; and (10) completion or termination of the contractor's participation in the program according to SBA's operating procedures.

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72. Hart T. Mankin, General Counsel, GSA, memorandum to Robert L. Kunzig, Administrator, GSA (Chairman of the Task Force), Dec. 3, 1969, p. 3.

GOALS AND OBJECTIVES OF THE 8(a) PROGRAM

The basic goal of the 8(a) program as stated in the controlling SBA regulation is "...to assist small business concerns owned and controlled by socially or economically disadvantaged persons to achieve a competitive position in the market place."[73] However, SBA has difficulty both in defining competitive status (or "viability" as it is often called) and in stating realistic criteria that can serve as a guide for SBA field personnel working with 8(a) contractors.

When queried about program goals and objectives, SBA officials responded in terms of a dollar volume of 8(a) contracts to be awarded. For example, the FY 1975 goal is $290 million to be matched with agency procurement needs.[74] No mention was made of such objectives as developing bidding and negotiating skills of the participants, despite the importance of these factors in developing the competitive status of the firms concerned.

SBA has not provided a clear explanation of the obstacles to achieving competitive status, nor could SBA officials identify a sequence of objectives that may lead firms to such status. The formulation of objectives for the program is left to regional personnel in developing business plans for individual firms, resulting in uneven administration of the program from region to region.

PROGRAM ORGANIZATION AND STAFF RESOURCES

Responsibility for administration and coordination of the 8(a) program rests with SBA's Office of Business Development (OBD), under the Associate Administrator for Procurement and Management Assistance. SBA also has an Associate Administrator for Minority Enterprise whose staff

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73. 13 C.F.R. 124.8-(b).

74. SBA's FY 1975 goals were submitted to the Interagency Committee at a meeting held July 8, 1974. Goals for previous years had included the number of contracts and the number of firms to receive those contracts.

is responsible for monitoring all SBA's loan programs for the participation of minorities. Minority enterprise specialists are only peripherally involved in 8(a) program operations.

SBA has consistently maintained that OBD's staff of 126 positions is not adequate to review all agency contracting for potential awards, process new applicants, and administer the approximately 2,000 contracts. The Administrator of SBA has dramatically stated his need for more staff, asserting before the Permanent Select Committee on Small Business that the 8(a) program is a "people-eater" and a "drain" on permanent people.[75]

Initially, administration of the program was centralized, but now it is operated largely through regional and district offices. Twenty-six of the 126 OBD staff members are in the central office, 84 in 10 regional offices, and 16 are assigned to 16 of the 64 district offices.[76] Approximately 60 new positions were requested for OBD in FY 1975. They are needed to lighten the workload of the current staff and correct an uneven staffing distribution in the field offices. For example, as of February 28, 1973, two staff members were assigned to Region VIII (Denver) and 14 to Region IV (Atlanta).[77]

The administrative requirements of the program simply overwhelm the current staff; and, although coordination of resources and steady monitoring are vital to a business development program, OBD has been unable to perform those functions with its limited personnel. Consequently, it borrows staff from other SBA programs. In some regions, personnel from other programs--such as minority enterprise specialists

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75. Government Minority Enterprise Programs-- FY 1974, p. 12.

76. Ibid, pp. 204-08. Although there were 64 district offices as of FY 1974, only 16 had been assigned an OBD staff representative.

77. Michael W. Gaupin, Assistant to the Administrator, SBA, in a letter to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Nov. 22, 1974 (hereafter cited as Gaupin Letter), noted: "The ethnic minority population of the southern region of the United States is greater than that of the Rocky Mountain area, hence the disparity in assignment of 8(a) personnel for these regions."

and procurement center representatives [78]--devote a major portion of their time to the 8(a) program. [79] This limits the ability of OBD to control program activities, since the minority enterprise representatives report to regional office directors and the procurement center representatives report to the Washington Office of Procurement Assistance, not to OBD.

Although the 8(a) program focuses primarily on minorities, there are few minorities on the OBD staff. According to SBA officials, as of June 30, 1974, there were only 10 minorities (5 males and 5 females) on OBD's 126-member professional staff. There were also only six white females. [80]

Moreover, agency contracting officials and 8(a) contractors interviewed by Commission staff complained that their experiences with SBA led them to believe that most OBD staff members lack technical expertise, with the exception of some retired military officers in "second career" jobs. One regional small business specialist stated that efforts in FY 1972 to reduce agency-wide civil service grade levels resulted in an increase in the number of entry-level trainees with virtually no experience in procurement, the technical aspects of various industries, or minority business development.

Personnel on loan from other SBA offices, however, do provide some technical expertise for the 8(a) program. The minority enterprise representatives, for example, have developed experience in construction,

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78. Procurement center representatives are specialists assigned to Federal agencies by SBA to assist these agencies in selecting contracts to be set aside for small businesses.

79. Interviews with SBA field officials.

80. Government Minority Enterprise Programs--FY 1974, pp. 9-10; and Winford Smith, Director, Office of Business Development, SBA, interview, July 10, 1974.

and the procurement center representatives are knowledgeable in reviewing the contracting process.[81]

On the other hand, using staff from other SBA programs tends to generate exaggerated criticism from borrowed staff, who complain that the 8(a) program requires a disproportionate amount of their time. For example, while one procurement center representative complained that the 8(a) program took 80 percent of his time, regional officials said that 30 percent would be a high estimate. The procurement center representatives interviewed by the Commission clearly prefer to work for the small business program rather than 8(a) because firms in the 8(a) program require more assistance. In fact, some view the 8(a) program as harmful to the small business set-aside program because it attempts to develop new competitors for established small businesses. They believe that the 8(a) program is merely subsidizing the creation of a class of privileged competitors, according to statements made during interviews with the Commission. One senior SBA official stated that many of the white business development specialists resent seeing minority businesses being awarded what they consider large contracts, especially for minority firms. Court suits challenging SBA's authority to operate the 8(a) program as a minority enterprise program tend to reinforce the tendencies of such officials to operate the program conservatively to avoid further suits.[82]

SBA attempts to limit 8(a) contracting opportunities to new procurement needs to avoid competition between its new and old clients.[83] This practice not only limits the 8(a) program but also fails to resolve the real conflict posed by SBA's dual commitment.

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81. SBA has 47 procurement center representatives, some at Federal installations and others who cover territories from regional or district offices. Many review procurement processes for both the 8(a) program and the small business set-aside program.

82. In Ray Baille Trash Hauling, Inc., v. Kleppe, 477 F2d 696 (5th Cir., 1973), cert. denied Feb. 19, 1974, 415 U.S. 914, the court affirmed SBA's authority to give preference to the socially and economically disadvantaged as long as that group was not restricted to racial minorities.

83. See 13 C.F.R. 124.8-2(b).

SIZE AND TYPE OF 8(a) CONTRACT AWARDS

Contracts awarded through the 8(a) program have increased from 8 contracts totaling nearly $10.5 million in FY 1968 to 1,720 contracts amounting to more than $153 million in FY 1972.[84] (See table 8.) These 8(a) contracts account for a major portion of all Federal contracts awarded to minority firms. Yet, they represented but a minute fraction, about 0.27 percent, of the total Federal procurement of $57.5 billion in FY 1972.[85]

According to a case study of the General Services Administration, one of the most committed and active agencies in the 8(a) program, the agency awarded 401 8(a) contracts in FY 1972 and 415 in FY 1973. In FY's 1972 and 1973, respectively, 75 and 72 percent of the contracts were for less than $50,000, and only 16 and 15 percent of the contracts in FY's 1972 and 1973, respectively, were over $100,000 (see appendix C, table 28).

The $153 million in 8(a) contracts for FY 1972 includes an estimated $10 million that is projected gross receipts of concessions awarded through the program[86] and the estimated order on "requirements contracts."[87] Actually, gross receipts for the minority firms may not have added up to the $10 million estimate. If these projections were

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84. The contracting level increased to $215.6 million in FY 1973 and $272.1 million in FY 1974. The projection is that 8(a) contract awards will total $290 million in FY 1975 and remain at that level.

85. Total Federal procurement for 1972 is estimated in Report on Government Procurement, vol. I, p. 1.

86. Under a concessions contract the Federal Government leases space in one of its buildings to an entrepreneur for a small percentage of the gross sales, plus payments for maintenance and improvement. Figures for FY 1973 and 1974 do not include concessions.

87. "Requirements contracts" are entered into when a particular agency promises to buy its needs for a particular item or service from one firm. Although the exact number of items or level of service that will be needed is unknown, the contract usually contains an estimate; but the agency may or may not spend the estimated contract amount.

excluded, actual 8(a) procurement for FY 1972 would be approximately $143 million, about 0.25 percent of the total Federal procurement for that year.[88]

Measured solely in terms of increasing the number and total dollar volume of contracts to minority firms, the program is only a limited success, particularly since the major 8(a) program goal was stated as a dollar amount that was less than one-third of 1 percent of total Federal contracting for FY 1972.

TABLE 8. SUMMARY OF 8(a) COMPANIES AND CONTRACT AWARDS THROUGH FISCAL YEAR 1972

Fiscal Year	Number of Contracts	Companies Awarded Contracts	Amount of Contracts
1968	8	7	$10,493,524
1969	28	21	8,857,771
1970	199	145	22,520,209
1971	812	508	65,414,474
1972	1,720	988	153,254,973
Totals	2,767	*	$260,540,951

*Since some companies received contracts in more than one fiscal year, a total of the companies would not be accurate.

NOTE: The number and dollar volume of contracts awarded in the 8(a) program differ in various reports. As of January 1974, SBA was still revising its figures for FY 1972, which ended on June 30, 1972. The differences are slight, so the Commission used the figures reported on Sept. 30, 1972, which are the highest reported.

Source: U.S., Small Business Administration. Status Report of 8(a) Contracts (Sept. 30, 1972).

However, the total dollar volume of contracts awarded does not provide the only basis for evaluating the impact on the development of minority businesses. Examination of the distribution of contracts among industries, however, provides another measure of the effectiveness of 8(a) subcontracting as a developmental program.

88. This figure is an estimate obtained by subtracting the amount reported by GSA for 8(a) concessions and an estimate of other overreported amounts from total 8(a) contracting. At the end of FY 1973, SBA initiated data collection procedures that should correct these overstatements. The agency also began staff training in data reporting to increase the accuracy of the data.

The industrial distribution of the 8(a) contracts awarded in FY 1972 is roughly similar to the overall industrial distribution of minority firms with paid employees. (Compare tables 9 and 10.)

TABLE 9. MINORITY-OWNED FIRMS WITH PAID EMPLOYEES IN SELECTED STANDARD INDUSTRIAL CLASSIFICATIONS, 1969

Industry	Number	Percent*
Manufacturing	4,088	13.0
Construction	8,214	26.0
Services	19,228	61.0
Total	31,530	100.0

*Percentage rounded to nearest one-tenth decimal point.

Source: Calculated from data in U.S., Department of Commerce, Bureau of the Census, Census of Minority-Owned Businesses: 1969, MB-1 (1971).

TABLE 10. INDUSTRIAL DISTRIBUTION AND AMOUNTS OF 8(a) CONTRACTS, FISCAL YEAR 1972

Industry	Number	Percent	Amount	Percent
Manufacturing	203	11.8	$46,307,784	31.0
Construction	649	37.7	27,735,496	18.6
Services	770	44.8	64,780,296	44.1
Other	98	5.7	9,378,763	6.3
Total	1,720	100.0	*$149,202,339	100.0

*Total differs from that in table 7 due to unreconciled differences in raw data.

Source: Calculated from data provided by the Reports Management Division of SBA (Nov. 29, 1973).

As of the end of FY 1972, the distribution of 8(a) contract dollars among the major industrial groups was highly concentrated in the service industries, as are the minority contractors. And although the program awards more contracts to construction firms than to manufacturing firms, the dollar value of the manufacturing contracts

was much higher in FY 1972.[89] This was largely because most 8(a) construction contracts were for relatively minor interior maintenance jobs, such as carpeting and painting. Similarly, a number of service contracts were for relatively low-cost custodial services.

A detailed analysis of 8(a) contracts awarded by GSA provides a case study of the characteristics of the program's contracting. (See appendix C.) It shows that, despite several large manufacturing contracts, most 8(a) contracts were low in value and awarded in the less promising services and small construction industries. The failure of the program thus far to emphasize manufacturing and general construction contracting undermines its potential for assisting in the development of minority firms in these industrial areas.

AGENCY PARTICIPATION IN THE 8(a) PROGRAM

Agency provision of procurement opportunities is fundamental to the program. Since its inception, the agencies have provided a steadily increasing number and dollar volume of contracts, but their levels of participation vary widely. This may be owing to a lack of commitment to the program by some of the agencies that do not provide significant contracting opportunities to minority firms.

One factor making participation in the program difficult is that the criteria are vague for selecting goods or services to be purchased. The question of which purchases should be made through the program continues to pose problems for both the agencies and SBA.

SBA regulations specify some of the factors to be used by agencies to determine whether a procurement need is suitable for an 8(a) firm. These regulations, however, tend to confuse procurement officials.

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89. An SBA official asserts: "The trend since FY 1972 has been from minor 8(a) construction contracts to those of greater value. Greater total value of 8(a) contracts is now in the construction category followed by the non-professional services, manufacturing and supplies, and professional services categories." Gaupin Letter.

For example, selection specifications are stated as follows:

> The percentage of all similar contracts awarded under the section 8(a) program over a relevant period of time, issuance of prior public solicitation of the procurement under a small business set-aside, the probability that an eligible concern could obtain a competitive award of the contract, and the extent to which other small concerns have historically been dependent upon the contract in question for a significant percentage of their sales. 90

These regulations raise numerous questions for procurement officials. What percentage of all similar contracts awarded over what relevant period of time would justify selection of 8(a) procurement? Does previous procurement of the goods or services by a small business set-aside that was formally advertised mean that the procurement should or should not be formally advertised in all cases? If it appears likely that an eligible concern could obtain a particular contract through competitive bidding, should that procurement be awarded through the 8(a) program? To what extent must other small concerns have been dependent upon the contract before it must be withheld from the 8(a) program? Does this mean that the other small concerns have a right to the contract? 91

SBA standard operating procedures provide little more guidance in applying the criteria for identifying goods and services for procurement through 8(a). The Federal procurement regulations, however, specify some factors for consideration:

1. Estimated total numbers of items to be purchased in the current fiscal year, and to the extent possible, further fiscal years.

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90. 13 C.F.R. Sec. 124.8-2(b).

91. In response to this statement, an SBA official asserts, "If a small non-8(a) business concern has been substantially dependent upon a specific procurement for its survival, that requirement will not be for the 8(a) program." Gaupin Letter.

2. Total number of items the contractor will be required to produce and deliver monthly.

3. The extent to which the contractor has produced items of similar nature and complexity.

4. Effect on the contracting agency if the items are not produced and delivered on time.

5. Technical specifications and estimated cost of items to be produced. 92

Review of individual agency procurement regulations and interviews with SBA and agency contracting officials provided little more concrete information on selection criteria. As one agency official put it, "selection of suitable contracts is a matter of experience and judgment not easily reduced to paper." He proposed that 8(a) procurements not be complex, urgent, or big jobs. According to this view, 8(a) contracts are "risky," require careful judgment, and the contracting officer should only err on the conservative side.

The surface view of the 8(a) program--that the agencies provide the contracts and SBA provides the contractors--obscures the complexity of the shared role of SBA and the Federal agencies in the contracting process. SBA, OMBE field representatives, and agency procurement officers review procurement needs for potential inclusion in the 8(a) program. In addition, current and potential contractors seek out contracts for themselves.

Normally, the contracting process is initiated by a Federal agency, which sends SBA a list of procurement needs it deems suitable for the program. SBA evaluates the goods or services needed in view of the capabilities of prospective contractors. If the SBA can identify a willing and able contractor, the contract moves to the negotiation and award stage.

If SBA fails to find a contractor within 30 working days under Federal procurement regulations--or 10 working days under armed services

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92. 41 C.F.R. Sec. 1-1.713(a)1.

procurement regulations--the agency may withdraw the procurement from the 8(a) program and release it for competitive bidding.

Agency officials and entrepreneurs have complained that SBA paperwork and internal procedures cause many procurements to be returned, either because SBA does not have sufficient time to find the contractors or because late notification does not leave a prospective contractor enough time to prepare an acceptable proposal. SBA officials admitted that their paperwork requires a great deal of time resulting in delays that create problems for 8(a) contractors and causing potential awards to be withdrawn.

SBA program officials are eager to have all Federal agencies participate, but because of the pressure of time and the lack of staff resources they tend to work with responsive agencies rather than attempt to convert the reluctant ones. Still, the failure of some agencies to provide procurements limits the entry of contractors into the program and restricts its outreach. For example, the Government Printing Office, which is responsible for most government printing, does not provide 8(a) contracts; and, although other departments provide some printing work to 8(a) firms, SBA is unlikely to certify printing firms. Thus, newly-formed printing firms may be denied the benefits of the program.

Agency 8(a) Contracting Effort

Data on 8(a) contracting reveal that agencies often provide too few 8(a) contracts and most are too small to promote real business development.

Commission staff reviewed the procurement activity of selected Federal agencies that accounted for 62.5 percent of all Federal procurement and 93.4 percent of all 8(a) procurement in FY 1972. Table 11 shows the relationship between 8(a) and the total contracting efforts of the agencies.

The 8(a) procurement of these agencies invariably represents a miniscule proportion of their total contracts. If 1 percent of the combined FY 1972 total procurement by the 10 agencies had been contracted

through the 8(a) program, the dollar volume of the program would have been 2½ times greater than it was in FY 1972. Also, if 1 percent of all FY 1972 Federal procurement had been contracted through 8(a), the program would have provided more than half a billion dollars in Federal contracts for minority-owned firms.

TABLE 11. 8(a) AND TOTAL PROCUREMENT OF SELECTED FEDERAL AGENCIES, FISCAL YEAR 1972 (MILLIONS OF DOLLARS)

Agency	Total Procurement (a)	8(a) Procurement (b)	8(a) as Percentage of Total
USDA	1,200.0	2.4	0.20%
DOD	30,400.0	74.2	0.24
EPA	92.1	0.9	0.97
GSA	1,300.0 (c) (e)	34.2 (d)	2.63
HEW	725.0	11.7	1.61
HUD	81.1	0.7	0.61
DOL	308.3	1.7	0.55
USPS	507.5	0.4	0.08
DOT	587.4	7.6	1.29
VA	737.3	9.6	1.30
10 Agencies	35,938.7	143.2	0.39
ALL U.S.	57,500.0 (c)	153.3	0.27

Sources: (a) Figures on total procurement of materials and supplies, construction, and services supplied by agencies in response to Commission inquiry (except GSA).

(b) Figures extracted from U.S., Small Business Administration, Status Report on 8(a) Contracts (Sept. 30, 1972).

(c) Estimates from Report on Government Procurement, vol. I, p. 3.

(d) GSA figures include concessions' awards, which are only actually procurements but leases to private firms permitting them to operate businesses on government property. The rent paid to the government is based on the annual gross receipts of the lease. Subtracting concessions reduces GSA 8(a) procurement to $25.3 million, 1.95 percent of the agency's total FY 1972 procurement.

SBA officials indicated that resistance to the program within the agencies continues, even if it is not always expressed. Though there are no indications that 8(a) firms perform more poorly than other small businesses, some agency contracting officers maintain that they do.

Some officers also indicated that the 8(a) program conflicts with their basic procurement responsibility to buy the best quality item at the lowest price, with the highest probability of prompt and satisfactory performance of the contract. In the absence of policy guidance, regional contracting officers often retreat to this principle to avoid possible risk at the expense of the 8(a) program.

In an attempt to overcome this reluctance, SBA issued a national directive on 8(a) stating: "Other government agencies will endeavor to cooperate with SBA on 8(a) only as long as the program fully supports and does not conflict with their procurement mission. Care must be taken, therefore, to assist them in their mission by avoiding delay or failure to the greatest extent possible."[93]

Contract Administration

The responsibility for monitoring the performance of 8(a) contracts and processing their vouchers is delegated to the agencies by SBA.[94] Each civilian agency administers its own contracts, and military agencies delegate the task, with some exceptions, to the Defense Contract Administration Service.

Contract administration procedures vary among the agencies, although 8(a) contracts are not treated differently from other contracts of comparable size within each agency. The contracting agency's concern is to ensure that contract specifications are met and that the product is delivered on time; in other words, that the terms and conditions of the contract are met.

Neither agency officials nor most entrepreneurs interviewed by Commission staff indicated that contract administration presented major problems for the program. Yet, 43.6 percent of the minority

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93. SBA, National Directive ND 680-1, Oct. 19, 1970.

94. See SBA, Standard Operating Procedure 60411 (November 1974), p. 72.

contractors felt that minority firms are more strictly monitored by agency technical representatives than are white firms. Most contractors, however, considered contracting specialists to be helpful by advising them of administrative procedures and promptly processing their payment invoices.

Contract administration procedures can provide technical assistance to a firm under contract. For example, the continuing relationship between contractors and Public Building Service officials on GSA construction projects provides opportunity for timely identification of problems that contributes to successful performance of a particular contract and to development of the contractor.

Contract administration seems to be the least controversial aspect of the 8(a) program, but then most 8(a) contracts do not necessitate extensive coordinating because of their relatively small size.[95]

Finally, while SBA may participate in periodic reviews of contractor performance, OBD's strained resources only permit minimal involvement in contract administration. Moreover, after a contract is awarded, SBA often has no further contact with a firm until its next contracting opportunity develops. Complete delegation of contract administration to the agencies limits SBA's ability to evaluate the capabilities and progress of 8(a) firms. Further, SBA's limited followup of 8(a) contractors to determine whether they are developing financial, management, and marketing expertise is not consistent with the program's overall objective of creating competitive firms.

CRITICISM OF SBA PROCEDURES

SBA has been criticized by representatives of minority trade associations and business development organizations for its methods of

95. Neither the agencies nor SBA maintain data that could serve as a basis for a comparison of late deliveries, terminations, and defaults of 8(a) contractors as compared to all small business contractors. Surprisingly, SBA maintains no data on defaults or terminations though, seemingly, such data is indispensable to program monitoring and planning.

certifying firms as eligible for the 8(a) program, matching prospective contractors with procurement opportunities, and negotiating and awarding the 8(a) contracts.

The Approval Of Contractors For The 8(a) Program

The Small Business Act does not impose any conditions for participation in 8(a),[96] but SBA policy restricts approval to firms owned by socially and economically disadvantaged persons.[97] The criteria for determining which firms are socially or economically disadvantaged, however, are vague in 8(a) regulations.[98]

The regulations, as amended in May 1973, state:

> An applicant concern must be owned and controlled by one or more persons who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social or economic disadvantage. Such disadvantage may arise from cultural, social, chronic economic circumstances or background, or other similar cause. Such persons include, but are not limited to Black Americans, American Indians, Spanish Americans, Oriental Americans, Eskimos, and Aleuts. Vietnam-era service in the Armed Forces may be a contributing factor in establishing social or economic disadvantage.[99]

SBA field officials determine the eligibility of applicants for participation in the program. Applicants must submit personal background information, subject to investigation, to support their contentions that they are socially or economically disadvantaged.

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96. 15 U.S.C. 637(a).

97. 13 C.F.R. Sec. 124.8-(b).

98. In addition to the statute and regulation cited above, the relevant documents are SBA, National Directive ND 680-1 (Oct. 19, 1970) and SBA, Standard Operating Procedure 6041 (Dec. 21, 1971).

99. 13 C.F.R. Sec. 124.8(c).

Establishing ownership of the applicant firm by a socially and economically disadvantaged person (usually a minority) and approving a business plan are the next steps in the process. Disadvantaged persons must own 50 percent or more of the interest in a joint venture or partnership, or at least 51 percent of the stock in a corporation. Corporations in which persons who are not socially or economically disadvantaged (usually white males) hold a controlling interest[100] are eligible for approval only if there is an agreement to transfer ownership to socially and economically disadvantaged persons (usually minorities).[101] The applicant is responsible for furnishing sufficient legal and financial records for SBA to determine ownership and control of the firms.

Each applicant must file a business plan (or business qualifications resume for construction firms) that shows the company's financial, production, marketing, and management capabilities with 3-year projections. Also, the plan should indicate the extent of 8(a) support needed and the manner in which the 8(a) program can assist the firm to become competitive in the open market. In addition, construction companies must provide information about their "track record," bonding, and licensing.

The purpose of the business plan is to provide SBA with enough information to determine whether the firm can supply a product or service at a reasonable price, what kinds of assistance other than SBA contracts are needed, and whether the firm is likely to achieve "viability" in

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100. For purposes of the SBA regulations, a person is deemed to have a controlling interest when he or she owns more than 50 percent of the outstanding voting stock of a corporation.

101. 13 C.F.R. §124.8-1(c)(2). SBA is wary of such arrangements and requires approval by the Associate Administrator for Procurement and Management Assistance. Management contracts and other joint ventures which "temporarily vest ownership or control in nondisadvantaged persons" also receive special scrutiny and approval. The purpose of such care is to ensure that the intended beneficiaries of the firm actually benefit and to prevent exploitation of minorities.

SBA's 3-year time period. Help in developing business plans is available through OMBE-funded organizations as well as through SBA; but, because of a lack of coordination between 8(a) program officials and OMBE-funded technical assistance organizations, the latter have not played a key role in developing the business plans.

The approval process, which includes assessing applications and business plans, might take as little as 3 weeks for a knowledgeable firm, or it could take over 6 months for a firm with problems in developing its business plan. The time required to process a business plan also depends on such factors as the problems of a particular firm, the various regional offices' staffing arrangements, their caseloads, and operating styles. Regional business development officers make recommendations after consulting with SBA's legal and financial analysts and other officials. Their recommendations are reviewed and forwarded by the chief of the Procurement and Management Assistance Division of the regional office to the regional director, who makes the final decision.[102]

According to SBA officials, early efforts to enroll as many contractors as possible resulted in approval of firms that do not meet current standards and never really had the basic capability to participate in government contracting or to benefit from the program. SBA is attempting to "purify" the rolls by ignoring such firms and terminating the participation of firms with little or no chances for success in the program. The current practice is for SBA regional officials to discourage applicants from developing business plans if no contracts are likely to be forthcoming. They do this by informing the applicants that SBA does not have enough procurements to meet the contracting needs of firms previously approved for the program. The type of firms

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102. Approval of firms in special situations, such as management agreements, may be delayed by the requirement of intensive legal review and approval from Washington.

being approved or discouraged vary from region to region. One SBA regional official expressed concern about the abundance of minority janitorial companies, stating "we have enough janitors to clean the world." Similarly, an SBA official at headquarters, Washington, D.C., expressed concern over the number of minority consulting and software companies that are highly dependent on government contracts. These types of firms, the SBA official asserted, tend to be locked into the 8(a) program for long-term support rather than for contracts to supplement other marketing efforts.

SBA does not keep records of firms that are denied approval. Field officials maintain, however, that the number of such firms is small. They attribute the denials to the following: (1) the firms are not owned or controlled by disadvantaged persons; (2) the firms do not produce goods or perform services purchased by the Federal Government; (3) the firms are clearly unable to meet government specifications; (4) the firms fail to provide sufficient information, particularly on their financial situation, for a determination of eligibility; or (5) there is no contracting opportunity "in sight."

The Commission did not hear recurrent complaints about the first four considerations, though some firms have disputed SBA's judgment. However, the denial of approval because of the lack of a likely contract has been questioned by representatives of minority trade organizations. The agencies may, in effect, deny entry to groups of firms by failing to provide appropriate contracting opportunities. Also, SBA's judgment that there is no contract "in sight" may conceal other reasons for denial of entry into the program.

The "Match" of Contract and Contractor

Despite the fact that the SBA regulations and the letter notifying the applicant of approval state that entry into the program does not guarantee that contracts will be forthcoming, the firms naturally expect contracts. There are firms that have not received contracts after

several years in the program, and others have received only one or fewer than the number or of smaller dollar value of contracts than requested in their business plans.[103] Complaints by firms without contracts based solely on the fact that other, similar firms received contracts are likely to continue, although increasing the number of contracts in the program might reduce their frequency.

Some complaints, however, reveal problems in the matching process. There is often more than one prospective contractor for a proposed contract, and the choice among them is made by SBA. It is not clear what standards SBA uses to select contractors in such circumstances. Agency officials and 8(a) contractors interviewed by the Commission's staff complained that SBA guards its discretion too jealously. Sometimes, for example, the agencies provide SBA with procurement needs and the names of potential contractors. In other cases, potential 8(a) firms discover potential contracts that agencies prefer to award through 8(a). On occasion, SBA accepts the procurement but rejects the contractor preferred by the agency and awards the contract to another firm.

In a case where an agency finds a firm, its rejection may discourage further outreach efforts by the agency and diminish its enthusiasm for the 8(a) program. Where a firm finds a potential contract, a negative response from SBA seems to be counter to the program's goals because it fails to reward the firm for its marketing efforts. SBA may have good reasons for its matches, but several contractors interviewed by the Commission believe themselves to be victims or beneficiaries of favoritism and political intervention.

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103. In FY 1972, the SBA awarded 1,715 contracts to only 988 firms although 1,780 firms had been approved for participation in the program. Thus, 44.5 percent of the firms approved for the program received no contracts. Status Report of 8(a) Contracts (Sept. 1972).

The Negotiation and Award of 8(a) Contracts

SBA is responsible for negotiation of the subcontract with the 8(a) contractor it has selected.[104] Agency representatives may participate, but generally they do not. At the same time, agency officials interviewed by Commission staff indicated that having SBA, rather than the agencies, handle negotiations results in unnecessary delay and overpricing. SBA officials countered that their conduct of negotiations is necessary to serve both the business development and procurement purposes of the 8(a) program. They support this contention with the claims that they are more familiar with the needs and capabilities of the contractors and that they have more access to resources to assist them.[105]

Commission inquiries regarding the pricing of 8(a) contracts drew responses too mixed to provide a basis for assessing assertions made by several contracting officers that 8(a) contractors submit excessively high bids. Entrepreneurs, however, indicated that, generally, overpricing is due to excessive operating costs and does not reflect a desire to realize excessive profits. Also, new, disadvantaged firms may have higher operating costs, and a "fair and reasonable price" for the government may not be fair and reasonable for the 8(a) contractor.

In cases where the bid price includes sums for capital start-up expenses (such as purchasing machinery, etc.), the portion of the bid price that exceeds the market price (the price the agency would pay if purchasing by formal advertising) is referred to as a "business development expense" (BDE).

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104. See SBA, SOP 60401 (November 1974).

105. SBA can, in fact, provide assistance in a variety of ways; for example, construction companies may obtain bonding or technical assistance and a guaranteed line of credit in addition to 8(a) contracts.

SBA now has funds to pay the business development expenses on manufacturing contracts.[106] There was some confusion among SBA regional staff as to whether the BDE should be used only for non-recurring start-up costs or for differentials resulting from recurring higher costs. In any event, SBA's use of less than half of the amount appropriated for business development expenses in FY 1973[107] indicates that in practice SBA followed the former approach. The current policy of SBA's OBD headquarters is to permit only the nonrecurring start-up costs.

The BDE is approved after the conclusion of a successful negotiation of a contract with an 8(a) firm by the Associate Administrator for Procurement and Management Assistance. SBA then awards the contract through the execution of appropriate contracts and subcontracts among the agency, SBA, and the 8(a) firm.

TECHNICAL ASSISTANCE FOR 8(a) CONTRACTORS

The provision of technical and management assistance is an integral part of the 8(a) program. Such assistance, however, is not provided in a uniform manner. Even though a firm's business plan provides a comprehensive assessment of its needs, SBA and the Federal contracting agencies do not adequately service these needs.

The provision of technical and management assistance to 8(a) contractors is extremely fragmented and uncoordinated. Assistance efforts are scattered among Federal agencies, the SBA Business Development Office, and OMBE-funded organizations. OMBE funds trade associations, business development service centers, and the technical

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106. The BDE differential payment is defined as "the difference between the fair market price and the price required by the 8(a) subcontractor to provide the product or service under an 8(a) subcontract with SBA...." SBA SOP 60 411 (Nov. 14, 1974), p. 87. Prior to FY 1972, the agencies had to absorb the cost differential. But during FY 1972 SBA authorized the use of BDE on manufacturing contracts, SBA SOP 6043 (December 1971).

107. Government Minority Enterprise Programs--FY 1974, pp. 12-15. Total BDE for FY 1973 was $6.6 million of $14 million appropriated, and the average BDE per contract was about 13 percent of contract value.

assistance of "call contractors" [108] to assist minority firms, but SBA is the only agency that is supposed to have a continuing relationship with firms approved for participation in the 8(a) program.

While SBA has access to more resources than the contracting agencies, its technical assistance is not especially geared to the needs of 8(a) contractors. SBA "call contractors" may deal with particular problems of minority firms, but they do not provide overall guidance.

Regional SBA officials, interviewed by the Commission, held OMBE's technical assistance resources in particularly low esteem and often did not mention their availability to 8(a) contractors. Contractors, interviewed by the Commission staff, in general, had little confidence in the volunteer assistance efforts of the various local internship programs. [109] The director of a contractor association in California, in particular, was so dissatisfied with the technical assistance being given by SBA and OMBE-funded organizations that he had turned to a larger corporate systems' organization to provide assistance to member firms. In most cases, there is little available to the 8(a) contractors in the way of steady reliable assistance to identify problems before they become unmanageable.

Furthermore, the assistance provided to 8(a) contractors is not focused on business development. Few minority firms can afford advertising budgets, full-time sales representatives, proposal and bid

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108. Both SBA and OMBE provide technical and management assistance through call contractors, which are private firms called upon to render assistance for a specified number of days. SBA's call contracting program is authorized by Sec. 406 of the Equal Opportunity Act of 1964 42 U.S.C. 2902. The authority for OMBE's call contracting program is based on Executive Order 11458 (1969).

109. ACTION provides volunteers through the Service Corps of Retired Executives (SCORE) and the Active Corps of Executives (ACE), former SBA programs. Many OMBE organizations have cooperative arrangements with universities and business colleges to provide internship opportunities for students to work with minority firms.

writers, full-scale market research, and the other elements of successful marketing. Yet, there is little emphasis by SBA or OMBE on the development of these resources and no adequate focus on marketing problems in contracting. SBA and OMBE officials concede that in the past they have placed emphasis on providing assistance for preparing loan applications. Generally, these agencies are beginning to allocate more resources to marketing, but their recent efforts have not begun to increase the effectiveness of minority firms in marketing programs in the government sector.

PROGRAM COMPLETION AND TERMINATION

After 5 years of 8(a) operation, few firms have graduated from the program. Many 8(a) contractors are reluctant to leave, despite the fact that their enthusiasm for the program is often lukewarm.[110] Although SBA officials are eager to graduate more firms, they express doubts that firms have fully benefited from the program.[111] One SBA official asserted that SBA could not point to a single successful firm that had been developed solely as a result of its participation in the 8(a) program.

SBA regulations state that a firm which has "substantially achieved the objective of its business plan will be notified that its participation in the program is completed" and that judgment of program completion will be made "in the light of the purposes of the program."[112]

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110. Six of 18 8(a) program graduate contractors interviewed by the Commission believed that the program was not helpful to them, and a large majority of those who felt it was helpful qualified their responses. Some even believed that the program could harm their businesses.

111. SBA frankly does not expect to meet its goal of 100 new graduates in FY 1974. See testimony of Administrator Kleppe in Government Minority Enterprise Programs--FY 1974, pp. 12, 27-28.

112. 13 C.F.R. §124.8-(e).

SBA officials use interchangeably the terms "achieve viability" and "achieve the ability to compete in the market place" to define the goal of the program, yet no one was able to specify criteria for assessing viability. In fact, one SBA official described program completion as a "nightmare."

Achievement of the objectives of the business plan presupposes that there are specified and achievable objectives. If the business plan is developed carefully and realistically, it would seem that a firm's progress could be assessed by comparing its financial statements with the plan. But 8(a) contractors maintain and program officials agree that business plans have often been drawn up casually and rarely reflect realistic and comprehensive assessments of a firm's needs and prospects.

SBA reported that the 8(a) program has graduated 29 firms that are "competitive" and "in very good shape." [113] Followup interviews by the Commission with 18 [114] graduates, however, failed to clarify either the

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113. The 29 graduate firms consisted of 10 construction, 13 service, and 6 manufacturing firms. Seven were Spanish speaking, 22 were black, 1 was Asian, and 1 was Indian-owned. Only one firm was owned by a woman. Gross receipts of the 12 firms providing financial information ranged from $10,000 for a janitorial firm to $1 million for a construction firm. However, the average gross receipts for these firms for 1973 was $308,900.

114. Government Minority Enterprise Programs--FY 1974, pp. 11-12. Six firms could not be located by the names of either the firms or principals. These names may have changed or the firms may have gone out of business. Four other firms did not provide sufficient information to be included in this assessment, and one firm reported that it had never participated in the program. Thus, only 18 firms were able to provide information on their firms' participation in the 8(a) program. Interviews were conducted by telephone between Jan. 17 and 28, 1974, and the information was cross-checked, where possible, with previous Commission interviews and SBA's Status Report of 8(a) Contracts (July 1973).

criteria used to determine their viability or the procedures by which SBA decided on the completion of their participation in the program. Twelve officials reported that their firms had received notification of their graduation. Six of the firms had objected to graduation and were reinstated, and another six accepted SBA's decision and considered themselves graduated whether or not they believed they should have been graduated. The remaining six firms listed as graduates were not aware that they had been graduated and two of these firms were listed elsewhere as having received 8(a) contracts in FY 1973 and FY 1974.

The 12 firms that were notified of graduation reported that they received notice of successful program completion by letters from SBA without any prior discussion. Several of the other firms which were not aware of their status in the program stated that they received their first notice of graduation in interviews with Commission staff.

Only 3 of the 18 officials believed that the 8(a) program had definitely helped them improve their business positions, and 7 officials felt that the program had not helped their firms at all. The remaining 8 officials were undecided.

The range of responses to the followup survey indicated that some of those interviewed should be considered true graduates in that they successfully completed the program, while others should be considered terminated not because they had achieved the objectives of their business plans but because the chances of their achieving competitive status seemed slim.

The 12 firms that were notified of graduation are now functioning in the private sector, but few attribute their marketing development to participation in the 8(a) program or to SBA assistance. In fact, several firms concluded from their 8(a) experience that Federal procurement could not provide them with profitable marketing opportunities because of the time and effort necessary to comply with rigid contract requirements.

The SBA 8(a) regulations also state that firms whose participation "will not further the program objectives" will be terminated before they complete the program. Potential grounds for termination include:

> The unavailability of appropriate section 8(a) contracting support, the inability of the section 8(a) concern to develop suitable commercial or competitive markets, inadequate management performance, and evidence of continued inadequate technical performance. 115

Thus, program termination may be the result of poor performance and management by the 8(a) firm, the failure of the firm and the technical assistance program to develop competitive marketing ability, or the failure of agencies and SBA to provide adequate contracting opportunities. 116

The guidelines for termination are nearly as confusing as those for successful completion of the program, as there are no criteria upon which to assess whether a firm has developed competitive marketing ability.

If SBA would implement plans to sharpen its business development focus, in addition to emphasizing increases in contract awards, operating objectives and criteria for decisions at every stage of the program would be clarified for the benefit of the contractors. 117

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115. 13 C.F.R. § 124.8-2(3).

116. SBA reported that 138 of 2,000 firms in the program between 1971 and 1973 had failed, largely for the reasons that small businesses usually fail. See Government Minority Enterprise Programs--FY 1974, p. 11. According to Dun & Bradstreet, 95 percent of small business failures are attributable to financial and management problems, The Business Failure Record, compiled by Dun & Bradstreet, Inc. (1973), pp. 11-12.

117. Government Minority Enterprise Programs--FY 1974, p. 12.

Chapter 6

THE BUY INDIAN CONTRACTING PROGRAM

The Buy Indian Act of 1910 authorizes the Secretaries of the Interior and Health, Education, and Welfare to negotiate contracts directly with Indian firms and tribes.[118] The Commissioner of the Bureau of Indian Affairs (BIA) exercises this authority on behalf of the Secretary of the Interior, and the Director of the Indian Health Service (IHS) exercises the authority at HEW.

The Buy Indian contracting program is unique among special contracting programs because it is limited to one minority group, it is a direct contracting program, and it permits contracting with nonprofit organizations (Indian tribes) as well as profit-oriented businesses. The direct contracting authority makes the Buy Indian program potentially more effective than other special programs because the Indian agencies can deal directly with Indian firms rather than having to go through a prime contractor or another Federal agency.

The Buy Indian authority was dormant for many years until Federal policy trends emphasizing more tribal administration of Indian programs, growing interest within the Indian community in economic development, and the convenience of the authority in meeting certain procurement needs contributed to its utilization. President Nixon's message on Indian affairs,[119] stressing the goal of Indian control of

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118. The Buy Indian Act is a provision enacted as Sec. 23 of the Indian Appropriation Act of June 25, 1910. The pertinent portions of the act state: "So far as may be practicable, Indian labor shall be employed and purchases of the products of Indian industry may be made in the open market at the direction of the Secretary of the Interior." 36 Stat. 855, 25 U.S.C. § 47. The Secretary of HEW's authority to operate the Buy Indian program is inherent with HEW's responsibility for the Indian health program, which was initially operated by the Interior but transferred to HEW by 68 Stat. 674, 42 U.S.C. 2001-2004; and Reorganization Plan No. 3 of 1966, 42 U.S.C. 202.

119. For the text of the President's message on Indian affairs to the Congress on July 8, 1970, see Weekly Compilation of Presidential Documents (July 13, 1970), pp. 894-905.

the $400 million annual Federal expenditures for Indian programs, and Executive Order 11458,[120] providing organization and policy direction for minority business development, gave added impetus to full implementation of the Buy Indian contracting authority.[121]

The Buy Indian program operates within the framework of the regular procurement activities of BIA and IHS and has no distinct organization or staff. Regular contracting officers, guided by the policies of their respective agencies, select contracts for negotiation under the Buy Indian authority.

The BIA's Chief of Contract Service, the chief procurement officer for the Bureau, is responsible for formulating BIA procurement policy but has no direct authority over the 11 area contracting offices or the three central purchasing facilities.[122]

The Division of Grants and Contracts in the Health Services Administration of HEW formulates IHS procurement policy, while the IHS Director of Administrative Services coordinates procurement activities, a task limited to transmitting contracting instructions and regulations to the area offices that have purchasing authority.[123]

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120. Executive Order 11458 (Mar. 13, 1969).

121. Staff interview with a former BIA contracting officer.

122. The 11 area offices are located in Aberdeen, S.Dak.; Albuquerque, N.Mex.; Anadarko, Okla.; Billings, Mont.; Minneapolis, Minn.; Juneau; Alaska; Muskogee, Okla.; Gallup, N.Mex.; Phoenix, Ariz.; Portland, Oreg.; and Sacramento, Calif. The three central purchasing facilities are the Indian Technical Assistance Center in Denver, Colo.; the Division of Plant Design and Construction in Albuquerque, N.Mex.; and the Field Services Division, also located in Albuquerque.

123. The nine area offices for procurement are in Albuquerque, N.Mex.; Window Rock, Ariz.; Aberdeen, S.Dak.; Anchorage, Alaska; Billings, Mont.; Oklahoma City, Okla.; Phoenix, Ariz.; Portland, Oreg.; and Tucson, Ariz.

Since the Buy Indian program is a direct contracting effort, BIA and IHS contracting officials have the authority to negotiate practically all contracts with Indian firms. Before the procurement needs of these agencies are formally advertised, the contracting officers are expected to ascertain whether any Indian firms can produce the needed goods and services. If so, the officers may negotiate contracts directly with the firms; but, when two or more Indian firms are found with the capabilities for fulfilling a contract, competitive bids are requested from them and a contract negotiated with the lowest bidder.

The number and value of contracts negotiated through the Buy Indian program has increased steadily. For example, in FY 1968, BIA estimated awards at $6 million and, in FY 1972, the BIA awarded $63.4 million in Buy Indian contracts.[124] In FY 1972, the two agencies awarded about 40 percent of their dollar volume through the program. (See table 12.)

GOALS AND OBJECTIVES

Despite the increasing volume of contracts that the Buy Indian program has directed to Indian tribes and firms, the absence of well-articulated goals and performance measurements, along with a lack of program coordination, has limited its effectiveness as a business development program.

The Buy Indian program is not designed solely as a business development program, although the BIA manual states that one of its goals is Indian business development.[125] The manual emphasizes: (1) assisting in establishment of Indian businesses for the promotion of Indian employment opportunities; (2) providing markets for the products of Indian industry; (3) providing business training and experience; and (4) developing contract bidding and negotiating skills. IHS has not stated goals for its program.

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124. Responses to the Commission's Special Questionnaire to Selected Federal Agencies Regarding Procurement Activities Under The Buy Indian Act.

125. 20 BIA Manual Sec. 5.6.

TABLE 12. BUY INDIAN CONTRACT AWARDS COMPARED TO TOTAL PROCUREMENT FOR THE BIA AND IHS, FISCAL YEAR 1972 *

Agency	Total All Contracts				Buy Indian Contracts			
	Number	Percent	Amount	Percent	Number	Percent Of Total	Amount	Percent Of Total
Bureau of Indian Affairs	2,308	100.0	$153,656,914	100.0	1,332	57.7	$63,364,234	41.2
Indian Health Service	2,095	100.0	31,658,049	100.0	309	14.7	9,208,869	29.1
Total	4,403	100.0	$185,314,963	100.0	1,641	33.5	$72,573,103	39.2

*Data on contracts awarded to Indians are not differentiated by sex of owner.

Source: BIA and IHS responses to the Commission's Special Questionnaire to Selected Federal Agencies Regarding Procurement Activities Under The Buy Indian Act.

Each agency is responsible for operating the Buy Indian program through its central and area contracting offices. Decisions regarding when and for what purpose the Buy Indian authority is to be used, however, are delegated to the area offices within each agency. Each purchasing officer may assign different priorities to the use of the authority, causing the operation of the program to vary widely among area offices as well as between the two agencies. For example, the Buy Indian share of the total contracting effort of selected IHS area offices ranged from 16.3 to 21.4 percent while in selected BIA offices it ranged from 19.2 to 42.8 percent.[126]

CONTRACTS AWARDED THROUGH THE BUY INDIAN PROGRAM

Buy Indian contract awards are overwhelmingly concentrated in services. In fact, this concentration is far greater than that for minorities in general. Contracting officials contend that there are few construction and manufacturing awards because there are few Indian firms in those industrial classifications. But since there are no data on the industrial distribution of Indian firms, the validity of this contention cannot be assessed. (See table 13.)

The Buy Indian program has also awarded more contracts to Indian tribes than to commercial firms. Table 14 shows the distribution of contracts between tribes and firms for several area offices.[127] If this pattern is typical of all Buy Indian contracting, less than 10 percent of Buy Indian contracts are awarded to commercial firms.

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126. Calculations based on figures provided to the Commission during interviews with area officials. Some figures are estimates based on data kept informally by contracting officers.

127. Figures are derived from file material provided by BIA and IHS area offices. The Commission staff visited area offices in Window Rock, Ariz.; Sacramento, Calif.; Albuquerque, N.Mex.; Aberdeen, S.Dak.; and Gallup, N.Mex., but only the five area offices in table 14 were able to supply data.

TABLE 13. INDUSTRIAL DISTRIBUTION OF BUY INDIAN CONTRACTS AWARDED BY THE BIA AND IHS, FISCAL YEAR 1972

Agency	Total		Services		Materials & Supplies		Construction	
	Dollar Amount	Percent	Dollar Amount	Percent	Dollar Amount	Percent	Dollar Amount	Percent
Bureau of Indian Affairs	$63,364,234	100.0	$61,190,822	96.6	$813,154	1.3	$1,360,258	2.1
Indian Health Service	9,208,869	100.0	7,891,121	85.7	65,187	0.7	1,252,561	13.6
Total	$72,573,103	100.0	$69,081,943	95.2	$878,341	1.2	$2,612,819	3.6

Source: BIA and IHS responses to the Commission's Special Questionnaire to Selected Federal Agencies Regarding Procurement Activities Under The Buy Indian Act.

TABLE 14. BUY INDIAN CONTRACTS AWARDED TO COMMERCIAL FIRMS IN SELECTED AREA OFFICES COMPARED TO TOTAL BUY INDIAN CONTRACTS, FISCAL YEAR 1972

Office	Buy Indian Contracts	Contracts Awarded to Commercial Firms	
		Amount	Percentage
Sacramento BIA	$ 949,000	$ 0	0%
Albuquerque BIA	2,400,000	605,385	25.2
Window Rock (Navajo) BIA	25,737,501	1,791,498	7.0
Albuquerque IHS	401,653	31,832	7.9
Gallup, N. Mex. (Navajo) IHS*	1,500,000	53,547	3.6
Total	$30,988,154	$2,482,262	8.1

*Figures are estimates for fiscal year 1972

Source: Commission staff interviews with area offices.

Contracting with tribes basically provides a means for transferring control of the program to Indians and also enables Indians to develop business experience. Nevertheless, Indian firms need a greater share of the contracting.

CONTRACTING PROCEDURES

The agencies responsible for implementing the Buy Indian Act have not developed comprehensive or uniform contracting regulations. BIA has issued a manual on the use of the Buy Indian Act,[128] but IHS has only issued an interim policy statement.[129] The regulations proposed by IHS consist simply of a statement of its existing practices.[130]

Deficiencies in Buy Indian contracting procedures are similar in many respects to those of the 8(a) program. In particular, procedures for selecting firms to participate as contractors and for selecting contracts to be negotiated under the act reveal crucial program weaknesses.

Selecting Firms to Participate as Contractors in the Buy Indian Program

The Buy Indian Act does not state any specific criteria for determining which firms are eligible to negotiate contracts, except that the items purchased must be the product of Indian industry.[131]

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128. 20 BIA Manual (May 21, 1971).

129. The "Buy Indian Act" Interim Policy Statement issued by the Deputy Director of IHS, Feb. 1, 1972.

130. Published in the Federal Register, Feb. 1, 1973. A final regulation has not been published as of this writing.

131. The BIA manual restricts eligible Indians to: "...Any Indian tribe, pueblo, band, group or community recognized by the Secretary of the Interior, or any individual or groups of individuals, irrespective of the degree of Indian Blood, recognized as Indian by the Secretary of the Interior or the Indian tribe with which they claim affiliation. The product of Indian Industry is anything produced by a business organization 100 percent owned by Indians which requires skill, labor or intellectual effort." 20 BIA Manual 5.5 A, B.

The BIA manual and proposed regulations of the IHS are considerably more restrictive, in that they require that firms be 100 percent Indian-owned to qualify for the prog m.[132]

Procedures governing the selection of firms for participation in the program, however, are not centrally coordinated by either BIA or IHS. The Bureau's manual states:

> Each contracting officer should catalog prospective Indian contractors by the type of "products of Indian industry" each can provide so that negotiation of contracts can be expedited when needed. This /sic/ data should be exchanged between contracting officers so that it /sic/ can be given the widest possible application in the normal competing area consistent with these requirements.[133]

The BIA manual also requires that firms submit proposals before negotiating a contract,[134] but the IHS has no comparable procedures.

Developing Catalogs of Prospective Indian Contractors

The Commission's review of contracting operations in selected BIA offices revealed that the provision of the manual that requires contracting officers to prepare catalogs of prospective Indian contractors is not being uniformly implemented. In fact, most area offices have not developed any catalogs, allegedly owing to a lack of staff. This means that most Indian firms are enrolled in the Buy Indian Program under BIA through their own initiative.

IHS does not require its contracting officers to compile lists of Indian firms,[135] and, unless area officers initiate them on their own, no lists are compiled.

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132. See BIA Manual 5.5B. See also Sec. 3-4, 5703(a) of HEW's proposed Negotiated Procurements Under the Buy Indian Act, regulations published in the Federal Register, Feb. 1, 1973. See also the interim policy statement referred to in note 124.

133. 20 BIA Manual 5.3.

134. Ibid., 5.9A.

135. IHS's Response to the Commission's Special Questionnaire to Selected Federal Agencies Regarding Procurement Activities Under The Buy Indian Act (Aug. 21, 1973).

Distribution of Information on the Buy Indian Program

BIA and IHS have not adequately informed Indian firms of contracting opportunities afforded by the Buy Indian program. BIA reported that "all Indian tribes and known Indian organizations were furnished copies of the BIA Manual, which explains the contracting process, when it was issued."[136] The manual, written in technical language for contracting specialists, provided the only comprehensive written information on the program for Indian firms by BIA. IHS stated that it passes out information "by meetings, word of mouth, and written materials."[137] Only 2 of the 11 firms participating in the Buy Indian program that were interviewed by Commission staff stated that they had learned of the program through information disseminated by the BIA or IHS. The other nine obtained their information by independent research or from relatives and non-Indian business associates. The failure of the BIA and IHS to distribute information on the Buy Indian program may account for the small number of Buy Indian contracts with commercial firms.

Selection of Buy Indian Contracts

BIA has three criteria for determining whether a contract should be negotiated under the Buy Indian Act. The product or service to be purchased must be a product of Indian industry, the contract must provide an economic benefit to the Indian contractor, and an Indian firm or tribe must submit an acceptable bid.

IHS has not published guidelines specifying criteria for selecting Buy Indian contracts, but several of the criteria used are similar to those used by BIA.

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136. See the BIA's Response to the Commission's Special Questionnaire to Selected Agencies Regarding Procurement Activities Under The Buy Indian Act (June 25, 1973).

137. IHS Response to the Commission's Special Questionnaire to Selected Agencies Regarding Procurement Activities Under The Buy Indian Act (Aug. 21, 1973).

Products of Indian Industry. The BIA defines products of Indian industry as anything "which requires the use of labor or intellectual effort produced by a business organization wholly owned by an Indian."[138] The manual specifies supplies, equipment, foodstuffs, maintenance, and construction.[139]

IHS has no comparable instructions, so its contracting officers must use their own discretion in determining whether items to be purchased from an Indian firm are the products of Indian industry.

There are at least two major differences in the definition of products of Indian industry between the BIA and IHS. Under the BIA definition, the negotiation of contracts for materials and supplies from Indian distributors is permitted, regardless of whether the products are manufactured by Indians. But, in contrast, under IHS's more restrictive definition, distributors qualify for Buy Indian contracts with IHS only if the product they distribute is made by Indians.[140]

Second, there are differences among regional offices. Some IHS area contracting officers negotiate construction contracts with Indian firms, while others refuse to do so. For example, under a 1970 decision of the Chief, Office of Procurement and Material Management, Health Services and Mental Health Administration, contracts for construction could not be negotiated under the authority of the Buy Indian Act.[141] Subsequently, nowever, the Chief of Procurement and Material Management advised area office directors that the restrictions on negotiating construction contracts under the Buy Indian Act "could

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138. 20 BIA Manual 5.5B.

139. Ibid., 5.11A (1).

140. "Contracting Under the Buy Indian Act," memorandum of Feb. 11, 1972, from Director, Office of Procurement and Material Management, Health Services and Mental Health Administration, to the contracting officer of the Oklahoma City IHS office.

141. "Eligibility of the Jack Boyd Construction Company Under the Buy Indian Act ..." memorandum from Acting Chief, Procurement Branch, Office of Procurement and Material Management, Health Services and Mental Health Administration, to Robert Jacoby of HEW (June 26, 1970).

be removed immediately."[142] Area contracting officials have interpreted this statement as giving them discretion in determining whether construction contracts are to be negotiated under the program. Thus the Aberdeen Office negotiates construction contracts under the Buy Indian Act, while the Albuquerque Office refuses to do so.

The inclusion of more categories of goods and services within the classification "product of Indian industry" would result in an increase in the goods and services that could be purchased through the Buy Indian program. A natural effect of this would be the participation of more Indian firms and tribes in the program. Also, development of consistent policies specifying which goods and services can be purchased under the Buy Indian authority would eliminate some of the confusion.

Economic Benefit to the Indian Contractor. While BIA requires that contracts provide economic benefits to prospective contractors,[143] IHS does not. However, IHS does permit contracting officers to award contracts that will create employment opportunities for Indians.[144]

Neither BIA nor IHS has developed procedures to assure that decisions regarding economic benefits and employment opportunities are made uniformly. Consequently, contracting officials base their decisions on their own judgments or rely on other officials, including reservation superintendents and program officials who generated the contracts.

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142. Interim Policy for Negotiation of Construction under Buy Indian Act, Aberdeen Area Indian Health Service (Oct. 9, 1970).

143. 20 BIA Manual 5.9A.

144. "Buy Indian Act," A Statement of Interim Policy issued by the Deputy Director of IHS, Feb. 1, 1972.

Determining Acceptable Bids. After a contract has been set aside for award through the Buy Indian program, it is awarded only if an acceptable bid is submitted.[145] Again, neither BIA nor IHS has issued guidelines defining what constitutes an acceptable bid. Some contracting officers interviewed by Commission staff accept reasonable prices while others accept only competitive prices. The latter is generally understood to mean the price for which an item would be purchased if a procurement need were formally advertised. The competitive price may be based on the price history of the item,[146] current prices quoted by firms selling the item, and the contracting officer's allowance for inflation, but a reasonable price may be higher than the competitive price.

The justification for accepting a reasonable bid is that the Buy Indian program does not authorize the payment of a business development expense to the contractor. Thus, if a higher price than the competitive rate is accepted, it includes, in effect, a business development expense.

The contracting officer in one of the five BIA and IHS offices questioned about pricing policies stated that he requires competitive bids. All others accept reasonable bids, but they differ on their pricing policies. For example, while the contracting officer in BIA's Aberdeen Office accepts bids 15 percent above the competitive price, the Navajo IHS officer does not accept bids that exceed the competitive price by more than 5 percent. The Navajo BIA officer does not base his determinations on percentage but tries to negotiate a price as close to the competitive price as possible.

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145. If no Indian firm or tribe submits an acceptable bid, the contract is usually awarded through the competitive process.

146. The price history is usually a record of what the agency has paid for identical products over a period of time. It would include the last price for which the item was purchased.

TECHNICAL ASSISTANCE FOR INDIAN FIRMS AND TRIBES

BIA and IHS provide little technical assistance to Indian firms and tribes, but the firms are eligible for assistance from SBA and OMBE-funded organizations on the same basis as other minority firms. BIA assistance is slight because its manual expressly prohibits the provision of technical aid to firms and tribes that are preparing proposals or negotiating contracts under the Buy Indian Act. The manual states that to do so "would place the Bureau in the position of negotiating the contract with itself."[147] Even after a contract is awarded, neither BIA nor IHS is staffed to provide the wide range of accounting, management, and marketing assistance essential for strengthening and developing Indian firms.

OMBE has funded eight nonprofit Indian business development organizations with a total allocation of $1,128,000. OMBE officials admit, however, that the major emphasis of these programs is on assisting with loan applications.

147. 20 BIA Manual 5.13C.

Chapter 7

THE MINORITY SUBCONTRACTING PROGRAM

The minority subcontracting program is based on a requirement that certain Federal contracts include clauses directing Federal prime contractors to attempt to utilize minority subcontractors. Its purpose is to implement the announced Federal policy of maximizing opportunities for the participation of minority firms in government procurement.[148]

When a contract is valued at $5,000 but less than $500,000, the prime contractor must use his "best efforts" to provide subcontracting opportunities for minority firms.[149] When the contract is for $500,000 or more and offers "substantial subcontracting opportunities," the prime contractor must develop an affirmative action plan to ensure fair consideration of minority firms as subcontractors.[150]

In the affirmative action plans, required in contracts of $500,000 or more, prime contractors must: (1) designate a person to administer the minority business development program; (2) consider the potential of known minority firms to produce needed goods and services; (3) invite bids from minority firms; (4) maintain records of procedures employed to involve minority firms; and (5) describe efforts to identify minority firms and award subcontracts to them. Major contractors are also required to cooperate with government contracting officers by submitting reports and participating in surveys and studies as requested.

Each Federal agency is required to monitor its contracts to ensure compliance with the minority subcontracting clauses, and OMBE is responsible for overall program coordination, including the development of comprehensive lists of minority firms. While contracting officers in

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148. 41 C.F.R. 1-1.1310-1; 32 C.F.R. 1-332.1.

149. 41 C.F.R. 1-1.1810-2(a); 32 C.F.R. 1-332.3(a).

150. 41 C.F.R. 1-1.1310-1(b); 32 C.F.R. 1-332(b).

the various agencies are responsible for monitoring the minority subcontracting clause, the agencies have never been allocated the additional staff necessary to carry out this assignment.

PROGRAM GOALS AND OBJECTIVES

Though the Interagency Committee has not developed comprehensive procedures for minority subcontracting, it views the program as a means for increasing the participation of minority firms in large manufacturing, research and development, and construction contracts.

Ideally, major contractors would work with minority manufacturers and suppliers to develop their expertise and track records. Additionally, SBA and OMBE programs could provide the opportunity for practical, relevant, and timely assistance to minority firms. But instead, the program has consisted of little more than the Federal agencies relying solely on the major prime contractors to merely provide information on subcontracting opportunities to minority firms.

THE AVAILABILITY OF DATA

Nine of the 10 Federal agencies surveyed by the Commission reported that they had not established systems to collect relevant and reliable information on minority subcontracting.[151] For example, an HEW contracting officer reported that efforts to collect information produced confusion because the HEW system led some contracting officers to include

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151. Of the 10 agencies surveyed, 9 are subject to either the armed services procurement regulations or the Federal procurement regulations. The Postal Service has its own procurement regulations, which do not include the minority subcontracting clause. Since the Commission's survey in mid-1973, the Environmental Protection Agency has started collecting data on minority subcontracting. It should be noted that NASA and the Atomic Energy Commission, (the Atomic Energy Commission has become a part of the Energy Research and Development Administration), two agencies not included in the Commission's survey, also have procedures for collecting data on minority subcontracting. Finally, the Interagency Committee's Task Force on Procurement is attempting to develop a standard form to be used by all Federal agencies in collection of minority subcontracting data.

irrelevant information such as contracts awarded to companies with minority representatives and project directors.

Only the Department of Defense provided data on subcontracts awarded to minority firms by major contractors. DOD prime contractors were required to begin submitting quarterly reports on minority subcontracting in January 1973, so the data provided cover only the third and fourth quarters of FY 1973. Table 15 shows the relationship between reported minority subcontracting and both small business and total subcontracting.

The identifiable minority share of DOD subcontracting was $19 million or 0.3 percent of $5.7 billion for the second half of FY 1973. Minority firms received less than 1 percent of DOD subcontracting with small businesses.

IMPACT OF THE PROGRAM

Statistics were not available to indicate the impact of the program; but, from all indications, it has failed to substantially increase either the numbers or dollar amounts of subcontracts awarded to minority firms.

The program has not been well publicized in the minority business community. Less than half of the 104 minority entrepreneurs interviewed, in fact, even knew of the program's existence, and only 2 of them considered it helpful in developing minority businesses. Several business development officials were unaware of the requirements of the minority subcontracting clauses, and contracting officials interviewed by the Commission invariably complained of their lack of staff resources and enforcement authority to implement the program effectively.

The ineffectiveness of the program may also be traced to several limitations in the regulations that require affirmative action plans from contractors on contracts of $500,000 or more, require only minimal recordkeeping, and exclude enforcement procedures. Other program weaknesses are attributable to the failure of the agencies fully to implement the programs. Only 2 of the 10 agencies surveyed by the Commission

TABLE 15. DOD'S PRIME CONTRACTORS' SUBCONTRACTING WITH MINORITY FIRMS COMPARED WITH ALL DOD PRIME CONTRACTORS' SUBCONTRACTING AND SUBCONTRACTING WITH SMALL BUSINESS (3RD AND 4TH QUARTERS OF FY 1973)

Period	Total Subcontracts	Small Business Share		Minority Business Share		
		Amount	Percentage of Total	Amount	Percentage of Small Business Share	Percentage of Total
3rd Quarter	$ 3,100,000,000	$ 1,000,000,000	32.27	$ 8,000,000	0.80	0.26
4th Quarter	2,600,000,000	1,100,000,000	42.30	11,000,000	1.00	0.43
Total	$ 5,700,000,000	$ 2,100,000,000	38.59	$ 19,000,000	0.88	0.33

Source: Statistical Services, Department of Defense.

--DOD and HEW--have established review procedures, and only 1--HUD--[152] has developed a comprehensive and reliable list of minority firms capable of performing as subcontractors.

Limiting affirmative action requirements to contracts of $500,000 or more exempts most Federal contracts. For example, five Federal agencies estimated a total of 667 contracts of $500,000 or more for FY 1972 but reported over 20,000 contracts ranging from $5,000 to $500,000.[153] Thus, for every contract requiring affirmative subcontracting efforts, at least 30 were exempt.

The regulations require very limited recordkeeping by the prime contractors, but only 2 of the 10 agencies surveyed (DOD and HEW) have developed procedures for maintaining records. The Environmental Protection Agency reported that it is in the process of formulating such procedures.

The regulations have no provisions for compelling contractors to comply with the minority subcontracting requirements. The absence of enforcement procedures impairs the effectiveness of the program. Though two of the contracting officers were of the opinion that they had authority to default the contractor for noncompliance, neither had done so even though they admitted, during the course of their interviews with Commission staff, that several major contractors were not in compliance with the minority subcontracting requirements.

Procedures for agency review of contractors' compliance with the requirement are practically nonexistent. Again, of the 10 agencies surveyed, only DOD and HEW have established such procedures. DOD and HEW's

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152. The HUD compilation is a listing of all minority construction firms in each of 10 regions. The listing gives the name, race (but not sex), and experience of the principals of construction firms and the location and license information of the firms.

153. The reporting agencies were the Environmental Protection Agency and the Departments of Agriculture; Transportation; Health, Education, and Welfare; and Housing and Urban Development.

small business specialists monitor contractors' compliance with the subcontracting clause by monitoring quarterly reports submitted by the contractors. Contracting officials in the other agencies did not know who was responsible for monitoring compliance[154] but assumed that it was either the Office of Federal Contract Compliance in the Department of Labor or their own civil rights offices. Since monitoring responsibilities for minority subcontracting have not been assigned to the Office of Federal Contract Compliance by statute, regulations, or Executive order, neither OFCC nor the agencies' contract compliance officials are enforcing compliance with the requirements.

The key to the success of the program is the frequency with which contractors determine that their government contracts offer substantial opportunities for subcontracting, as the regulations direct that the contractor, not the agency, determines whether there are or will be subcontracting opportunities. Yet, agencies have not established criteria to guide the contractors in fulfilling their obligations under the minority subcontracting program.

Finally, all existing lists of minority firms are limited geographically or by industrial classifications. Prime contractors, Federal small business specialists, and contracting officers blame OMBE for not carrying out its responsibility to develop an adequate and accurate directory of potential minority contractors.[155]

Several Federal agencies and major prime contractors have developed and published their own source list. The Department of Housing and Urban Development's directory of all minority construction-related firms, which

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154. The Postal Service does not have a minority subcontracting program.

155. In response to this criticism, OMBE Director Alex Armendaris asserted "...OMBE has compiled a number of business directories and funded the distribution of a number of comprehensive directories mentioned in your report. For example, OMBE funded a National Directory of Minority Manufacturers and a Directory of Minority Professional and Consulting Firms that was distributed to every contracting office throughout the country." Letter to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Dec. 16, 1974.

lists over 5,000 such firms, is the most comprehensive listing that the Commission encountered. The directory published by McDonnell Douglas Corporation, for example, is one of the most comprehensive, although it does not identify the race or sex of the owners; [156] and the Minority Business Opportunity Committee of the Los Angeles Federal Executive Board, in conjunction with the Jet Propulsion Laboratory, implemented a program to identify minority firms, verify their capabilities, and distribute regularly up-dated information on them to corporate and government procurement officials. [157] OMBE has developed and distributed directories of minority manufacturers, consultants, and media firms.

Another tool agency contracting specialists could use to encourage prime contractors to subcontract more to minority firms is contract negotiations, but they have not done so. Federal agencies have not made full use of the proposal evaluation process for competitively negotiated, cost-plus contracts to further the minority subcontracting program. As stated previously, there are three basic procedures for awarding Federal contracts: formal advertising with competitive bidding, negotiation with competing firms, and negotiation with only one firm. In negotiated contracts, agencies may permit payment of cost plus a fixed fee, an incentive fee, or a fixed price. Generally, agencies use cost-plus when they "wish to motivate the contractor to apply his efforts towards specific elements of contract performance." [158]

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156. See McDonnell Douglas Corporation, Minority Business Enterprise Directory (July 1, 1973). The directory lists minority firms (not by race or sex) by the goods or services they provide. The firms are also cross-classified by States and cities.

157. This effort has produced a large document, the Minority Business Capabilities Survey, which cross-references firms and products and announces the availability of microfilmed data on the firms.

158. Report on Government Procurement, vol. 1, p. 21.

Procuring agencies could also motivate a contractor to seek out minority subcontractors. But these agencies have neither required their contracting officers to consider the contractor's history of minority subcontracting in evaluating contract bids or proposals nor considered a good minority subcontracting plan as a factor in the determination of the contractor's fee or profit.

In the final analysis, however, the primary deficiency of the minority subcontracting program is that it has not been fully implemented by the agency contracting officers and major government contractors. All too often, the affirmative subcontracting efforts of major corporations consist of little more than publishing statements that they offer subcontracting opportunities to minority firms.

Part II

MINORITIES AND WOMEN AS STATE AND LOCAL CONTRACTORS

INTRODUCTION

State and local governments purchased $62.5 billion in goods and services from the private sector in 1972,[159] $5 billion more than was spent by the Federal Government. These State and local purchases amounted to 5.5 percent of the gross national product in 1972.

Minority and female-owned firms, however, received less than seven-tenths of 1 percent of all contracting dollars spent by those State and local governments that provided data to the Commission during a survey taken in 1973.[160]

The same problems encountered by minorities and women seeking Federal contracts occur at the State and local levels. Unlike Federal procurement, however, State and local purchases for supplies are in relatively small quantities and may be from wholesalers or retailers.

State and local governments spend far more, proportionately, than the Federal Government for construction; in 1973, 38.9 percent of their contracting dollars as compared to 8.7 percent by the Federal Government. The reverse situation obtains in materials and supplies.[161] The Federal Government spent 53.3 percent of its contracting dollars for materials

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159. U.S., Department of Commerce, Survey of Current Business, vol. 53, no. 5 (May 1973), pp. S-1, 53.

160. The U.S. Commission on Civil Rights Questionnaire to State and Local Governments Regarding their General and Minority Procurement Programs, (OMB No. 115-573001). The original questionnaire was sent to 50 States, 51 cities, and 36 counties. The cities selected were those whose Standard Metropolitan Statistical Area included at least 500 minority-owned firms in 1969, excluding establishments in retail trade, finance, insurance, and real estate. In addition, other cities were selected on the basis of having a minority population of 50,000 or more. The county governments were those in which the selected cities are located. A followup questionnaire was sent to the States of Missouri, Minnesota, Ohio, Texas, and Washington. Of the 137 jurisdictions surveyed, 76 responded. No data were available to determine those cities or areas with a concentration of female-owned business. For a more comprehensive analysis of the survey, see appendix A.

161. U.S., Department of Commerce, Survey of Current Business, vol. 54, no. 7 (July 1974), p. 32.

and supplies compared with 27.0 percent spent by State and local governments. As for services, the respective percentages are much closer, 38.0 percent by the Federal Government and 34.1 percent by State and local governments.[162]

Thus, since a large proportion of minority firms are retail and small construction companies, and since female-owned firms are concentrated in retail industries, both the volume and nature of State and local contracting is sufficient to provide extensive contracting opportunities to firms owned by minorities and women.

Furthermore, a large portion of State and local contracting dollars is provided by Federal grants. Since grant-in-aid money is often commingled with State and local revenue, it is difficult to determine when Federal money is being used for State and local contracts. The Federal Government has attempted through these grants to stimulate the establishment of minority contracting programs by State and local governments by requiring them to develop such programs as conditions of the grants. However, the Federal Government has made no such effort to establish contracting programs to assist firms owned by women.

Federal efforts, however, have not resulted in a significant increase in the number of State and local contracting programs and awards for minorities or women. Of the jurisdictions surveyed, only 10 have attempted to comply with Federal requirements by initiating programs to increase their contracting with firms owned by minorities, but without specific Federal encouragement these jurisdictions have not sought to increase their contracting with firms owned by white women.[163] Also,

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162. Ibid.

163. The 10 jurisdictions with special contracting programs for minorities are: California; Illinois; Massachusetts; Denver, Colo.; Los Angeles, Calif.; Long Beach, Calif.; Philadelphia, Pa.; St. Paul, Minn.; San Diego, Calif.; and Los Angeles County, Calif.

of the governments surveyed, only 11 are able to identify contracts awarded to minority firms and only 3 are able to identify any contract awards to firms owned by women.[164]

A review of the design, scope, and limitations of existing programs, however, can lend guidance to State and local governments that are just beginning to formulate business development programs for minorities and women.

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164. The 11 jurisdictions that collected some data on contracts awarded to firms owned by minorities or women are: California; Illinois; Minnesota; Missouri; Ohio; Washington; Denver, Colo.; Los Angeles, Calif.; Long Beach, Calif.; Philadelphia, Pa.; and Los Angeles County, Calif.

Chapter 1

STATE AND LOCAL CONTRACTING WITH FEDERAL GRANT FUNDS

Although Federal grants have a long history, the major growth in the number of grant programs and amounts of money provided has occurred only since FY 1950. Federal aid to State and local governments increased from $2 billion in FY 1950 to $45 billion in FY 1974.[165]

Federal grants-in-aid may be in the form of general revenue sharing, which has few restrictions on its use. A more common form, however, is the categorical grant, used for specific purposes, including education, highway construction, law enforcement, and environmental improvements. Because Federal grant funds are commingled with State and local appropriations, Federal regulations governing the use of the funds affect nearly all State and local contracting.

Federal authority to prohibit discrimination against minorities by State and local grantees in the operation of their programs is based on Title VI of the Civil Rights Act of 1964, which prohibits discrimination in any activity or program receiving Federal financial assistance.[166] Each Federal agency must enforce Title VI requirements and may impose penalties for noncompliance, such as termination or refusal of assistance. Title VI, however, does not require grantees to establish programs to utilize minority businesses. Nor does Title VI prohibit discrimination on the basis of sex.

STATE AND LOCAL AFFIRMATIVE ACTION REQUIREMENTS

Executive Order 11246, as amended by Executive Order 11375, and OMB Circular A-102 are two measures that have been used by Federal agencies to require State and local governments to undertake affirmative action programs to provide contracting opportunities to minorities.

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165. U.S., Executive Office of the President, Office of Management and Budget, Special Analyses, Budget of the United States Government (FY 1974), p. 212.

166. Civil Rights Act of 1964, Public Law No. 88-352 as amended, 42 U.S.C. 2000d. Employment discrimination and contracts of guaranty are specifically excluded from Title VI coverage.

Executive Order 11246

Executive Order 11246, as amended, prohibits discriminatory hiring practices in federally-assisted projects.[167] Contractors bidding on federally-assisted construction projects are required to submit affirmative action plans detailing efforts they will undertake to increase minority and female employment. The purpose of the affirmative action plans is to establish minority and female hiring goals for contractors.

Instead of each contractor's developing an individual affirmative action plan, contractors may adopt affirmative action plans that have been approved by the Secretary of Labor for the area in which the work is to be performed. These area plans are referred to as either hometown or mandatory plans. Hometown plans are voluntarily adopted by local contractor associations. These voluntary plans are developed jointly by local government officials, union officials, and contractors' associations and are approved by the Secretary of Labor. Mandatory plans are imposed by the Secretary of Labor when a jurisdiction with a large concentration of minorities and/or women does not submit an acceptable plan for hiring minorities and women.[168]

As of July 1974, there were 62 hometown plans and 7 mandatory plans. Since prime contractors may count the employees of their subcontractors toward the minority and female hiring goals in their areas, the Secretary of Labor has encouraged including provisions in the plans that stimulate minority subcontracting.[169] Two of the mandatory plans and 27

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167. Executive Order 11246 (Sept. 24, 1965), amended by Executive Order 11375 (Oct 13, 1967), 3 C.F.R. 173.

168. Although Executive Order 11246 does not specifically direct the Secretary of Labor to impose area goals, the Court has upheld the Secretary's authority to do so. See Contractor Assn. of Eastern Pennsylvania v. Shultz, 442 F. 2d 159 (3rd Cir). Cert. denied, 404 U.S. 854 (1971), aff' 311 F. Supp 1002 (E.D. 1970).

169. Dr. George Travers, Associate Director for Program Policy and Planning, Office of Federal Contract Compliance, interview, Washington, D. C., Aug. 16, 1973.

of the hometown plans contain minority subcontracting clauses,[170] but none includes requirements for providing contracting opportunities for women.[171]

The enforcement of minority affirmative action subcontracting programs is virtually nonexistent. State and local contracting officers uniformly conceded to Commission staff that nothing is being done to monitor or enforce their affirmative subcontracting requirements owing to a lack of staff resources. And Federal agencies conducting compliance reviews of prime contractors on federally-assisted projects generally do not monitor the subcontracting practices of prime contractors because, as an OFCC official stated, "there is no authority for investigating subcontracting procedure under the regulations and moving to enforcement for failure to subcontract to minority firms."[172]

The Office of Management and Budget Circular A-102

The Office of Management and Budget authorizes Federal agencies to require grantees to undertake affirmative action to ensure greater utilization of minority businesses but makes no mention of the need to ensure the utilization of female-owned businesses. OMB Circular A-102

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170. Hometown plans were provided to the Commission by the Office of Federal Contract Compliance, Department of Labor. For mandatory plans see 41 C.F.R. sec. 60-5(e) 16 and sec. 60-6.21(e) 16. The authority of the Secretary of Labor to encourage minority subcontracting requirements is inherent in his authority to carry out the provisions of Executive Order 11246. See Contractor Assn. of Eastern Pennsylvania v. Shultz, 442 F. 2d 159 (3rd Cir.), (E.D. 1970).

171. The Northern Illinois Construction Industry Affirmative Action Program, as amended May 12, 1971, provides an example of a typical hometown plan minority subcontracting provision: "The objectives of which this Agreement is entered into by the parties is to jointly institute, establish, and maintain an affirmative action program which will recruit, employ, provide employment opportunities, train employees ... in the following manner by developing programs:... 7. To encourage and assist minority group contractors or subcontractors in bidding on construction projects."

172. Dr. George Travers, Office of Federal Contract Compliance, DOL, interview, Washington, D.C., Aug. 16, 1973. Dr. Travers clarified his comments in a letter to John A Buggs, Staff Director, U.S. Commission on Civil Rights, Dec. 5, 1974.

established uniform requirements for Federal agencies in the administration of grants to State and local governments.[173] The directive states, in part:

> The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements: Positive efforts shall be made by the grantees to utilize small business and minority-owned businesses as sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Federal grant funds. 174

With the exception of the Environmental Protection Agency, which requires its grantees to submit reports on steps being taken to increase minority contracting opportunities, Federal agencies have not taken steps to determine whether State and local grantees provide contracting opportunities to minorities. In fact, implementation of the circular's minority contracting clause has been limited simply to paraphrasing its language in agency grant agreements. State and local grantees are not even required to keep records or data pertaining to their efforts to utilize minority businesses.

Federal agency efforts to enforce the A-102 clause are slight because contracting officials believe that OMBE is responsible for promoting the development of minority businesses.[175] Department of Transportation officials expressed the view, commonly held by other agency officials, that OMBE is the watchdog that develops and coordinates minority business programs. On the other hand, an OMBE

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173. Office of Management and Budget Circular A-102, attachment O, sec. C(3) (October 1971). The circular does not specifically refer to firms owned by women.

174. Ibid.

175. Interviews were conducted with officials from the Department of Transportation; Commerce; Agriculture; Labor; Health, Education, and Welfare; and Housing and Urban Development; the Office of Federal Contract Compliance; and the Environmental Protection Agency. These agencies administer most of the Federal grant-in-aid programs. Interviews were also held with officials of the Office of Minority Business Enterprise and the Office of Management and Budget.

official stated that his agency had not attempted to coordinate and oversee the implementation of the OMB minority contracting provisions by Federal agencies. He feels that OMBE's funding of State OMBE programs fulfills its responsibility to promote State and local contracting with minorities.

Despite assertions by most agency officials that responsibility for monitoring compliance with A-102 minority subcontracting provisions belongs to OMBE or elsewhere, the Environmental Protection Agency has established a noteworthy program for monitoring compliance and collecting data. To assure compliance with the A-102 subcontracting requirements, EPA's regional compliance officers inspect and review grantees' efforts to utilize minority firms. These reviews are based on information from the grantee indicating the number and dollar value of contracts with minorities, nature of the work, cost of the contracts, and name of the project.[176]

As a result of these efforts, reported contracts awarded to minorities by EPA grantees increased from $1.2 million in FY 1972 to $6 million in FY 1974.[177]

SPECIAL CONTRACTING PROGRAMS ESTABLISHED BY STATE AND LOCAL GOVERNMENTS

Responses to the Commission's survey requesting data from State and local governments on special contracting programs indicate that very few State and local grantees have established programs to aid minority or female-owned firms. Only 10 of the 76 jurisdictions responding to the Commission's questionnaire, or 13.1 percent, indicated that they had developed special contracting programs. Seven of these jurisdictions and four governments without special programs indicated that they maintain records on minority and/or female contracting. (See table 16.)

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176. Marge Wilson, Head of Minority Business Enterprise Section, Contracts Policy Review Branch, Contracts Management Division, Environmental Protection Agency, interview, Sept. 14, 1973.

177. Environmental Protection Agency Minority Business Program Report (FY 1974).

TABLE 16. STATE AND LOCAL JURISDICTIONS WITH SPECIAL CONTRACTING PROGRAMS FOR MINORITY OR FEMALE-OWNED FIRMS AND/OR DATA COLLECTION SYSTEMS TO DETERMINE THE NUMBER OF CONTRACT AWARDS TO MINORITIES OR WOMEN

Jurisdictions	Special Contracting and Recordkeeping	Special Contracting Only	Record Keeping Only
California	*		
Illinois	*		
Massachusetts		*	
Minnesota			*
Missouri			*
Ohio			*
Washington			*
Denver, Colo.	*		
Los Angeles, Calif.	*		
Long Beach, Calif.	*		
Philadelphia, Pa.	*		
St. Paul, Minn.		*	
San Diego, Calif.		*	
Los Angeles County, Calif.	*		

Source: Responses to the Commission's Questionnaire to State and Local Governments Regarding their General and Minority Procurement Programs (OMB No. 115-573001). The questionnaire also requested information on programs for women.

CONTRACT AWARDS TO MINORITIES AND WOMEN

Only 3 of the 11 jurisdictions that provided contracting data to the Commission awarded more than 1 percent of the dollar amount of their contracts to minority or female-owned firms in FY 1972.[178] The remaining eight awarded well under 1 percent, and the average of all jurisdictions was six-tenths of 1 percent for minorities and four-one hundredths of 1 percent for women. Only three of the areas were able to identify contracts awarded to female-owned firms.[179]

The States that identified minority and female contractors did not distinguish among racial or ethnic groups or cross-classify data by sex. Moreover, data maintained by the jurisdictions are inconsistent. For example, in some jurisdictions, data were provided for highway construction only, while data from other jurisdictions were for all public works contracts. Nevertheless, the data available are the only indicator of the extent to which State and local governments awarded contracts to minority and female-owned firms in FY 1972.[180]

The results of the Commission survey are summarized as follows:

* Illinois reported total contract awards of $735 million for FY 1973. A total of $8.2 million was awarded to identified minority firms, representing approximately 1.1 percent of the State's total contract awards.[181]

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178. The three jurisdictions are Illinois, the City of Long Beach, and Los Angeles County, Calif.

179. The three jurisdictions are the States of Ohio and Washington, and the City of Long Beach, Calif.

180. Data were only given for minorities as a group and females as a group, with no break-out for race or ethnicity. Thus, it is impossible to determine whether some of the awards to minorities were made to minority women or how many minority women are included in the total awards to women. In fact, there may be some double counting.

181. Approximately $8 million of the awards to minority firms were for construction, according to the Illinois Department of Transportation.

* Ohio awarded almost $74 million in contracts in FY 1972. One contract valued at $39,000 was awarded to a female-owned firm and $45,801 in 26 contracts went to minority firms. Thus, about one-tenth of 1 percent of State purchasing money went to 27 minority and female-owned firms.
* In Minnesota, two prime contracts for services totaling $74,000 were awarded to minority firms in FY 1972 out of a State highway budget of $129 million.
* The State of Washington awarded approximately two-tenths of 1 percent of its $175 million procurement budget to women and minorities in FY 1972. Three contracts totaling $463,000 were awarded to minority firms and one subcontract of an unknown amount to a female-owned firm.
* Missouri began recordkeeping on contracts awarded to minorities and women in FY 1973, and in the first 6 months seven contracts were awarded to minority firms. The dollar value amounted to about $21,000 or less than 1 percent of the State's procurement budget for the year.[182]
* Philadelphia, Pennsylvania, awarded $500,000 or 0.6 percent of a total of $85 million for public works contracts to minority firms in FY 1972.
* Denver's Department of Public Works awarded approximately $23.5 million in contracts in FY 1972, but none went to minorities or women.

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182. Figures were not provided for the State's total procurement in FY 1973. However, a procurement officer estimated that $21,000 was less than 1 percent of the budget.

* California, which has an annual procurement budget of approximately $500 million, awarded only $10,000 in contracts to identified minority firms in FY 1972, and $60,000 in FY 1973.
* The City of Long Beach awarded nearly $13.5 million in procurement contracts in FY 1972, with $175,000 awarded to minority-owned firms and $35,000 to firms owned by women. The total minority and female-owned firm dollar volume was about 1.5 percent of the procurement budget, the highest percentage the Commission found.
* The City of Los Angeles identified approximately $280,000 in construction contracts as awards to minorities in FY 1972, representing about 1.1 percent of the construction budget and less than one-half of 1 percent of the total procurement budget.
* Los Angeles County awarded approximately $140 million in contracts in FY 1972. Purchase orders to known minority firms totaled $1,422,892, giving them about 1 percent of the total amount.

A few jurisdictions have had limited success in increasing the number of construction awards to minorities; but, on the whole, State and local governments have not significantly increased the awards of contracts for services, materials, and supplies to either minority or female-owned firms.

Chapter 2

STATE AND LOCAL PROGRAMS

State and local contracting programs range from those directed exclusively toward minority and female-owned businesses to those geared toward all small businesses. They are usually less formal and more loosely structured than the Federal programs discussed in Part I of this report. Their general objective is to increase the number and dollar amount of contracts awarded to already competitive minority and female-owned firms, in contrast to the Federal programs, which focus on taking fledgling firms to a point where they can compete in the mainstream. The limited scope of the State and local programs avoids some of the major problems of the Federal programs, such as the tendency of new firms to overextend and become indebted.

The effectiveness of State and local programs depends on the willingness of contracting officials to identify and utilize minority and female-owned businesses as suppliers of goods and services. The programs identified by the Commission fall into two categories: programs based on administrative authority and programs based on statutory authority.

PROGRAMS BASED ON ADMINISTRATIVE AUTHORITY

A variety of programs based on administrative authority concentrate on informing minorities and women of contracting opportunities or providing them relief from bonding requirements. The most effective are the affirmative action subcontracting programs for federally-assisted construction projects.[183] Each of the 10 jurisdictions that reported special contracting programs has affirmative action programs.

Although Executive Order 11246, as amended by Executive Order 11375, prohibits racial and ethnic as well as sex discrimination in hiring, none of the 10 jurisdictions with affirmative action subcontracting programs has affirmative action requirements for women.

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183. See discussion of the requirements of Executive Order 11246, as amended, on pp. 90-91.

Affirmative action subcontracting programs generally do not provide for negotiation of subcontracts with minority firms but encourage the flow of information on subcontracting opportunities to these firms. Most jurisdictions merely insert clauses in contracts requiring the prime contractors to "...seek out and use minority manpower [sic] (and) solicit bids for subcontracts from available minority subcontractors engaged in pertinent trades." [184] The Los Angeles hometown plan, however, directs contractors to advertise invitations for subcontracting bids in the minority news media, contact minority contractor organizations for referral of potential subcontractors, and contact sources likely to yield minority contractors. [185]

Some administrative programs emphasize encouraging minorities and women to bid on contracts to supply goods and services to State and local governments. The program staff conduct seminars on selling to governments, develop minority and female bidders' lists, counsel minority and female entrepreneurs, and participate in minority-sponsored workshops.

An administrative directive authorizing efforts to assist minority and female-owned businesses in Long Beach, California, is an example of an administrative type of program. [186] Government officials there implemented an educational forum for minority and female entrepreneurs in addition to focusing attention on Federal and local mandates directing that minority and female subcontractors be encouraged to submit bids.

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184. Sample bid conditions for Long Beach, Calif.

185. Los Angeles City Affirmative Action Requirements for Construction Contracts (July 1972).

186. City of Long Beach, Calif., Purchasing Division's Affirmative Action Program, Jan. 1, 1973.

A similar program in Los Angeles County is more comprehensive. It includes a minority vendors' program, which was established by the county purchasing division primarily for the purchase of supplies. This program, however, is directed only toward minorities. A directive, issued in March 1972, requires all buyers to develop lists of minority firms from their own sources and minority business associations that include the capabilities and interests of the firms.[187]

A key element of the Los Angeles County program is a requirement that all informal offers be directed to at least two minority vendors "in addition to the regular vendors normally solicited."[188] Minority firms cannot be removed from the bidders' lists without the approval of the chief purchasing agent, and buyers are encouraged to spend time familiarizing minority firms with county purchasing practices. Moreover, each buyer must file a minority vendor activity record on each purchase showing the number of bid notices, replies, and awards. These reports are reviewed by a high-level procurement official.[189]

Informational programs in some other jurisdictions delegate to other organizations the responsibility of informing minority or female-owned businesses of contracting opportunities. For example, the community relations commission in Denver has assumed this responsibility, while the State of California relies on its federally-assisted office of minority business enterprise.

The Commission also identified a special bonding program in Philadelphia that was established on the basis of administrative authority. On the initiative of the commissioner of procurement, the

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187. Los Angeles County Purchasing Division Directive, "Minority Vendor Program," Mar. 27, 1972.

188. Ibid. Informal bids are solicited on all contracts.

189. Ibid.

city contracted with an insurance company in 1972 to provide bonds for all suppliers whose contracts range from $2,000 to $20,000.[190] Philadelphia, like many other jurisdictions, requires performance bonding on contracts exceeding $2,000,[191] which small suppliers found difficult to obtain. Since most city contracts exceed $2,000, small suppliers were unable to bid on city work. The procurement commissioner envisions that this program will increase minority contracting with the city.

Although the jurisdictions with special contracting programs have administrative policies supporting them, most of their statutes or charters only permit contracting as usual, which persents a major obstacle to establishing programs for negotiating contracts without competitive bidding. Administrative programs, therefore, are limited to providing information, developing bidding lists, and encouraging minorities and women to submit bids.

Another obstacle to effective implementation of contracting programs based on administrative authority is the unwillingness of many contracting officers to abandon long-established contracting practices that are not directed toward minorities or women. The minority contracting policy in California, for example, states that its objective is to assist minority business "... to compete for the material, supplies, and equipment our office purchases for State agencies."[192] The policy statement, however, also indicated that the State purchasing office does not have the legal authority to give preferences to any contractors.

Efforts to increase the number of minority and female firms on bidders' lists have also been thwarted by contracting practices. For

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190. Otto R. Winter, Philadelphia Commissioner of Procurement, letter to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Mar. 20, 1973.

191. Philadelphia Home Rule Charter, Section 8-200 (c).

192. Robert L. Vance, Assistant Purchasing Manager, California Office of Procurement, memorandum to Lance Rideout, Chief, Legal Section, California Human Resources Development, Jan. 15, 1973.

example, California purchasing offices still require minority firms to comply with stringent prequalification standards.[193] When purchasing officers have tried to modify these standards, they have met with opposition from the State's legal counsel.[194]

Contracting agents pointed out that, without legislative authority or strong executive support, they are not justified in diverting staff resources to special efforts to aid minorities or women, and in most jurisdictions neither the legislative authority nor the executive support exists.[195]

STATUTORY CONTRACT SET-ASIDE PROGRAMS

Set-aside contracts are those which are withheld from the competitive bidding process and directly negotiated with an individual firm or put up for bids from limited classes of firms, such as minority and female-owned businesses. Statutes and ordinances provide the authority for set-aside contract programs, but the Commission was able to identify only one such program, which is operated by the State of Illinois.

The Illinois Small Business Purchasing Act authorizes a formal set-aside program in which contracts are withdrawn from general competitive bidding and reserved for the exclusive bidding of small

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193. Prequalification refers to the process of evaluating whether firms are capable of performing on government contracts. Generally, these governments set minimum requirements for working capital, equipment, experience, and past performance which firms must meet in order to be eligible to bid on contracts. California Department of Public Works' ratings are based on 10 times working capital or 4 times net worth, whichever is smaller.

194. Ralph E. Livingston, Jr., Office of Legal Counsel, memorandum to Robert J. Datel, California State Highway Division, April 26, 1972.

195. Contracting officials for Los Angeles stated that, since competitive bidding is not required for contracts of less than $20,000, set-aside programs could be established if the purchasing office were directed by the mayor to do so.

businesses.[196] The purpose of the act, which is applicable to all State agencies except the university system, is to increase contract awards to small businesses.[197] Although the law applies to all small businesses, in practice it also focuses on minority and female-owned firms.

The act defines a small business as a wholesale firm whose annual sales do not exceed $5 million, a retail firm whose annual sales are not over $1 million, or a manufacturer employing less than 250 persons.[198] The act was implemented by the Illinois Department of General Services, which compiled a bidders' list of about 2,000 firms, including 188 minority and 5 female-owned firms. Firms considered by the State OMBE and other business advisory groups to have the potential for contracting with the State are continually added to the list.

The Illinois Department of General Services is responsible for designating categories of items that are to be set-aside for small businesses.[199] A small business coordinator sets aside contracts for goods and services that can be provided by small firms. If fewer than three small business firms respond to an invitation to bid or if acceptance of the lowest bid would mean paying an unreasonable price, the department will reject all bids and open the bidding to all firms.

The Commission also identified one program in Denver, Colorado, that has informal bidding procedures established by legislative action.

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196. Illinois Small Business Purchasing Act, Illinois Revised Statutes, Ch. 122, sec. 132.21.

197. Ibid., sec. 132.22.

198. Ibid., sec. 132.23.

199. One hundred and ten purchase items have been designated for set-aside contracting, ranging from brief cases to moving equipment and sand or gravel.

The Denver small purchase ordinance,[200] which amended the Denver City Charter in 1970, authorizes informal bidding on any contract for supplies and services totaling less than $5,000 and removes requirements for performance bonding and prequalification for firms filling these contracts. Also, contracts for less than $2,500 were sent to the community relations commission for the solicitation of minority bidders through an agreement between the commission and the procurement office.

While the Illinois and Denver programs have potential, neither has been particularly successful in increasing contract awards to minorities and women. Insofar as the Illinois act does not specifically provide the authority to establish programs to aid minority and female-owned firms, these firms must compete with small, but well-established, white male firms. Since a large number of contracts is awarded to small, white male firms that can frequently afford to underbid a new minority or female-owned firm, neither minority nor female-owned firms have fared particularly well in the program.

The Denver program is limited because it was established solely for minorities and restricted to small purchases. Only contracts of $2,500 or less were referred to the community relations commission for soliciting of bids from minority firms. This practice has been discontinued because minority firms were not enthusiastic about bidding on numerous small contracts when the cost of bidding and performing could have diminished their prospects for net profits.

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200. Denver City Charter, sec. 161.3 as amended by Ordinance 319, adopted July 23, 1970.

Chapter 3

LIMITATIONS COMMON TO EXISTING STATE AND LOCAL SPECIAL CONTRACTING PROGRAMS

State and local contracting officials acknowledged that their special contracting programs are limited in their successes. While many different reasons were given for the shortcomings of individual programs, most of the programs suffer from poor dissemination of information to minorities and women and limited staff resources.

DISSEMINATION OF INFORMATION

The failure to receive adequate notice of contracting opportunities was cited by entrepreneurs in nearly every jurisdiction the Commission visited. Only 19.3 percent or 12 of the 62 minority males and 28.5 percent or 4 of 14 female entrepreneurs interviewed in jurisdictions with special contracting programs were aware of any State or local contracting opportunities being offered.[201]

Informal bidding procedures are not well advertised in minority or women's media and State purchasing offices are remote from most areas with a large number of minority firms. For instance, California does the bulk of its purchasing in Sacramento where the State purchasing office and the State OMBE are located, but most minority firms are in Los Angeles or San Francisco. However, the State's entire minority outreach program currently consists of one purchasing office in Los Angeles, which is staffed with two people and purchases only a limited range of goods.

The Illinois outreach effort, on the other hand, has made progress by adding 188 minority and 5 female-owned firms to the small bidders' list since its inception in June 1973. This effort is viewed as an essential component of a successful small business program; and, therefore, sufficient budget and staff have been allocated to it.

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201. Although 125 firms were interviewed (84 minority male and 41 female), only 76 of these firms were located in jurisdictions with special State and local contracting programs.

STAFF RESOURCES

Only one program examined had staff members who were familiar with the problems of firms owned by minorities and women and with the need for affirmative action to increase their participation in State and local contracting. The Illinois small business purchasing program had a small business coordinator, who spent full time assisting minority and female entrepreneurs and acquainting department personnel with the requirements of the act.

Few minority or female buyers and construction specification engineers were on the staffs of the special contracting programs. The cities of Long Beach and Philadelphia had no female or minority buyers in their purchasing departments, and San Diego had only two black male buyers but no women on a purchasing staff of eight. In Philadelphia, however, the chief contracts officer was a minority male who was familiar with the number of minority firms that were prequalified for city construction contracts and the dollar value of contracts awarded minority businesses by the city.

Special contracting program staffs have not been given any special training for implementing the programs in their jurisdictions. An exception, however, was the Illinois State OMBE, which employed five business development specialists in minority communities around the State. All five were minority group members and one was female.

Negative attitudes among State and local procurement officers also present a barrier to the participation of minorities and women as contractors. Most purchasing staff members are white male civil servants accustomed to operating according to long-established rules. Almost all of these officials expressed reservations about any changes in procedure that might be designed to benefit minorities and women.

Several white procurement officials expressed strong opposition when asked about their efforts to increase the participation of minorities and women in government contracting. One said that, if Federal

officials had not meddled in State affairs, the State buyers would never have had to deal with special programs. One contracting officer, in particular, rejected the practice of keeping contracting data on minorities or women. State and local contracting officers, in general, also expressed the view that minority and female firms cannot be relied upon to perform, despite the lack of evidence of support such a belief.

LEGISLATIVE AND ADMINISTRATIVE MEASURES TO CREATE NEW PROGRAMS

State and local contracting officials uniformly asserted that statutory restrictions and the absence of strong executive support are the most serious impediments to establishing effective special contracting programs to aid minority and female-owned firms. They maintained that the most effective special programs are the contract set-aside and programs where strong leadership is exercised by the chief executive. Thus, several jurisdictions have sought legislative authority before implementing any special minority or female business development programs, but they have not been successful in having such legislation enacted.

In Arkansas, for example, a small business purchasing bill was introduced, paralleling in substance the Illinois act discussed in chapter 2.[202] It provided for establishment of a small business bidders' list and the setting aside of certain categories of commodities, equipment, and services for bidding restricted to small firms. If enacted, the legislation would have directly benefited all small businesses because it directed "that a fair proportion of its total purchases and contracts for property and services be placed with small business concerns and that a reasonable amount of purchases placed with small business shall be minority-owned businesses."[203] However, the Arkansas Small Business Purchasing Bill died in the Insurance and Commerce Committee.

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202. State of Arkansas, Senate Bill 231, 69th General Assembly, 1973.

203. Ibid.

The extent to which minority businesses profit from legislation of this type depends largely upon its interpretation and implementation. An active interpretation--identifying minority firms, recruiting for bidders' lists, and inviting minorities to bid--would considerably benefit minority firms in terms of increased bidding opportunities and contract awards. But, if no special effort is made to involve minority or female businesses, small business preference acts have little effect on minority or female business development.

House Bill 743 [204] was introduced in Pennsylvania in 1973. It would have created a special business development program in the State department of commerce directed towards women as well as minorities. A proposed amendment to the bill specifically included women under the definition of minority business.

A few State and local governments reported other proposed measures, including review of current laws, commitments to develop minority business programs in the future, and executive orders. The Governor of Mississippi, for example, pledged to establish procedures for directing State contracts to the minority business community.

The City Council of Kansas City, Missouri, adopted a resolution in 1972 which requested the city manager to implement new procedures to facilitate the participation of minority and female businesses in contracting.[205] The city manager, accordingly, has undertaken an in-depth review of city ordinances and contracting procedures to determine the best method to increase the level of minority and female participation in the city's procurement and to eliminate any barriers to their involvement.

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204. Pennsylvania House Bill 743 was referred to the Government Committee, April 3, 1973, and never reported out.

205. Resolution 41344 enacted June 9, 1972.

Kansas City is one of very few local jurisdictions that view female contractors as a group equally disadvantaged but distinct from minority business people.[206] City officials look toward a modification of administrative procedures rather than an amendment to the charter as the most practical way of increasing contracting opportunities for minority and female-owned firms.

206. Ibid.

PART III

FINDINGS AND RECOMMENDATIONS

FINDINGS

MINORITIES AND WOMEN AS FEDERAL CONTRACTORS

I. Minorities as Federal Government Contractors

A. The Federal Government spent about $57.5 billion for goods and services purchased from private contractors in FY 1972 but purchased less than $400 million from minority firms. Purchases from minority firms represented about 0.7 percent of all Federal procurement in that year despite the fact that minorities owned 4 percent of all American businesses in 1969.

1. Federal Government procedures for collecting and distributing data on minority firms and for determining their share of government contracts are inadequate and inconsistent.

2. Comparison of statistics reported to OMBE and those reported to the Commission from other agencies reveals significant discrepancies in data and confusion about what should be reported. If OMBE's report is adjusted to reflect the figures supplied by three other agencies, total Federal purchases from minority-owned firms as reported by OMBE are reduced by about 25 percent to approximately $300 million, about 0.5 percent of Federal contracting, for FY 1972.

B. Minority firms are overwhelmingly concentrated in the retail and selected service industries in which the Federal Government does the least amount of contracting. Also, the small size of most minority firms tends to limit their ability to compete for Federal contracts.

II. Women as Federal Contractors

A. There is very little information on the participation of female-owned businesses (both minority and nonminority) in government contracting, but available data suggest that female participation is less than that of minorities.

B. The available data indicate that firms owned by women, like those owned by minorities, are heavily concentrated in wholesale, retail, and service classifications, those least likely to produce goods or to provide services purchased by the Federal Government.

III. Limits Common to Minority and Female-Owned Firms

A. Federal contracting procedures and practices (such as preaward surveys and inadequate dissemination of information on sole source contracting opportunities) tend to place an added burden on minority and female-owned firms seeking government contracts.

B. Government contracting officers expressed biases against minority firms and a belief that giving attention to socioeconomic considerations hampers the procurement process.

C. Minorities and females are poorly represented as government contracting officials, which would preclude their influencing procurement policy and contractor selection.

D. Insufficient working capital, lack of knowledge of bidding opportunities, and preselection before formal advertising were stated by minority and female entrepreneurs as major factors limiting their competitiveness for government contracts. The Commission found evidence that insufficient working capital and lack of knowledge of bidding opportunities are indeed problems, but no cases were presented to Commission staff supporting allegations that preselection before formal advertising is a widespread practice.

1. Small business and equal opportunity loans have not been effective in meeting the working capital needs of these firms.

2. Minority and female firms' inadequate knowledge of Federal contracting opportunities hampers their ability to submit timely bids and negotiate successfully for contracts.

IV. Three Special Contracting Programs to Assist Minority Business

A. The SBA 8(a) subcontracting, the Buy Indian direct contracting, and the minority subcontracting programs are three special programs established with the expressed objectives of assisting minorities to overcome some of the barriers to successful marketing in the public and private sectors.

B. Female-owned firms have extremely limited access to these programs, since only minority females are eligible, as minorities. Several women's rights groups, however, are taking the position that, because of past employment and credit discrimination, women as a class are "socially or economically disadvantaged" persons and thus eligible to participate in existing special programs.

C. Nonminority females are not eligible for these programs because the agencies administering them do not believe that there is a national policy of assisting firms owned by white women.

V. The 8(a) Subcontracting Program

A. The 8(a) program is the largest special contracting program and provides one of the few mechanisms by which Federal procurement activities are coordinated and monitored. It is conducted jointly by SBA and all procurement offices in the Federal Government, with SBA as the coordinator.

B. The basic goal of the program is "...to assist small business concerns owned and controlled by socially or economically disadvantaged persons to achieve a competitive position in the market place." SBA has neither clearly defined criteria for ascertaining the achievement of competitive status nor stated specific program goals, except in monetary terms.

1. The formulation of objectives for participating firms is left to SBA field officers. They determine these objectives on the basis of a firm's business plan, which may not realistically reflect its potential.

2. The lack of specific goals has led to different administrative procedures in various SBA offices and continued uncertainty regarding the program's effectiveness.

C. SBA's staffing practices limit the effectiveness of the 8(a) program.

1. In FY 1974, SBA's Office of Business Development (OBD) had only 126 staff members, 100 of whom were scattered among 16 regional and 64 district offices. The 100 staff persons were responsible for reviewing all government contracts to determine those which offer 8(a) contracting opportunities, negotiating and awarding contracts, and monitoring contract administration.
2. OBD relies heavily on borrowed staff from other SBA programs to operate the 8(a) program. Regional administrative officials, procurement center representatives, and minority enterprise representatives work part time for 8(a), sometimes with little enthusiasm, for many of them see it as a diversion from their "real" jobs.
3. There are few minorities or minority business specialists on OBD's staff.
4. Many OBD staff members lack technical expertise to assess the needs, problems, and performance of minority firms.

D. Contracts awarded under the 8(a) program have increased from 8 contracts totaling nearly $10.5 million in FY 1968 to 1,720 contracts amounting to more than $153 million in FY 1972. This represents a minute fraction, however, of the total Federal procurement.

1. Measured solely in terms of increasing the number and total value of contracts to minority firms, the program has demonstrated that it has potential as a means for increasing contract awards to minority firms.

2. The industrial distribution of the 8(a) contracts, which is roughly similar to the overall industrial distribution of minority firms with paid employees, provides a basis for assessing the effectiveness of the program as a developmental tool.
   a. The distribution of 8(a) contract dollars to minority firms is concentrated in the service industries as are the minority contractors.
   b. Most 8(a) contracts are low in value and awarded to the less profitable service and construction industries which undermines the program's potential as a developmental tool for minority business.

E. Agency participation in the program varies widely, with some agencies providing little or no significant contracting opportunities for minority firms. Factors contributing to poor participation of several agencies include deficiencies in the contracting process and a lack of agency commitment and contracting effort.
   1. SBA regulations and standard operating procedures do not clearly define criteria for selection of potential 8(a) contract awards.
   2. SBA paperwork and unexplained delays in processing applications cause many contracts to be returned to the agencies.
   3. Federal agencies often do not provide contracts that promote economic development, and their 8(a) procurements invariably represent a small percentage of their total contracts.

4. Although contract administration seems to the least controversial part of the program, contractors do not benefit as much as they could from the technical expertise of the agencies or SBA.

F. SBA's performance has been criticized for the methods it uses to approve firms as eligible for the 8(a) program, to match prospective contractors with procurement opportunities provided by Federal agencies, and to negotiate and award contracts.

1. Criteria for the approval of contractors are only minimally specified in 8(a) regulations, SBA administrative directives, and standard operating procedures.
   a. Approval procedures vary among regions.
   b. Approval is principally based on business plans, most of which are unrealistic in their goals and projections.
   c. Early efforts to enroll as many contractors as possible resulted in the approval of firms that do not meet current standards and never really had the basic capability to meet Federal procurement needs.
   d. Decisions to deny approval to otherwise eligible firms because there is no contract "in sight" may conceal other reasons for the denial of entry into the program.
2. There are no evident criteria for matching potential contracts with 8(a) contractors, and many contractors believe themselves to be adversely affected by favoritism and political intervention.

G. The provision of financial, technical, and management assistance is fragmented and inadequate.

1. The 8(a) program is designed primarily as a marketing rather than a financial assistance program.

2. Technical and management assistance efforts are scattered among Federal procuring agencies, the SBA Business Development Office, and OMBE-funded organizations and generally are not focused on marketing.

H. SBA regulations state that a firm which has "substantially achieved the objective of its business plan will be notified that its participation in the program is completed," yet the agency has not specified criteria for assessing whether a firm has achieved its objective.

1. It is impossible to base decisions concerning completions on business plans that are not comprehensive or realistic.

2. SBA reported 29 successful graduates of the program, but many of the graduates are uncertain about the benefits of their program participation and their prospects for the future.

   a. Six of the 18 graduates interviewed by the Commission had objected to graduation and were reinstated. Another 6 accepted SBA's decision and considered themselves graduated whether or not they believed they should have been. The remainder were not aware that they had been graduated.

   b. Officials of only 3 of the 18 firms believed that the program had definitely helped them improve their business positions, and 7 firms felt that the program had not helped them at all. The remainder were undecided.

c. The range of responses indicated that some (about three) of those interviewed should be considered true graduates in that they achieved the objectives of their business plans, while others should be considered terminated because it was unlikely that these firms would achieve the objectives of their business plan.

d. Few of the graduated firms attribute their marketing development to their participation in the 8(a) program or to assistance from SBA.

3. The guidelines for termination are nearly as confusing as those for successful program completion.

VI. The Buy Indian Program

A. The Buy Indian contracting program, administered by the Bureau of Indian Affairs (BIA) and HEW's Indian Health Service (IHS), is unique among special contracting programs because it is limited to one minority group and is a direct contracting program. It also permits contracting with nonprofit organizations (Indian tribes), as well as profit-oriented Indian firms.

B. In FY 1968, BIA estimated awards of $6 million in Buy Indian contracts, while in FY 1972 the BIA awarded $63.4 million in contracts. BIA and IHS together awarded $72.5 million in Buy Indian contracts in FY 1972, representing 39 percent of all contracting for both agencies.

C. The program is not designed solely as a business development program, although the BIA manual states that one of its goals is Indian business development. IHS has not stated goals for its program.

D. The Buy Indian program has no staff of its own but is operated by area offices within each agency. Its administration, therefore, varies widely.

E. Buy Indian contract awards are overwhelmingly concentrated in service industries, and most contracts are awarded to tribes rather than to firms. The program has not increased the participation of Indian commercial firms in government contracting.

F. Neither BIA nor IHS has developed comprehensive or uniform contracting regulations.

1. The Buy Indian Act does not state any specific criteria for determining which firms are eligible to negotiate contracts, except that the items purchased must be products of Indian industry.
2. Procedures governing the selection of firms for participation in the program are not centrally coordinated by either BIA or IHS.
3. The Commission found only one contracting officer who had compiled a list of Indian firms or solicited contract proposals.
4. BIA requires that a contract must provide an economic benefit to the Indian contractor. Since there are no criteria for determining what constitutes an economic benefit, the decision on whether a contract offers an economic benefit is left up to an area contracting officer. Consequently, the decisions are not uniform.
5. Contracts are awarded only if acceptable bids are submitted, but neither agency has issued guidelines defining what constitutes an acceptable bid.

G. The BIA and IHS have made only minimal efforts to distribute information on the Buy Indian program to Indian tribes and firms.

H. BIA and IHS provide little technical assistance to Indian firms and tribes.

VII. The Minority Subcontracting Program

A. The minority subcontracting program is based on a requirement that a clause be included in major Federal contracts requiring prime contractors to undertake efforts to ensure that minority firms receive fair consideration as subcontractors. Its implementation has been uncoordinated unstructured, and understaffed.

1. When a contract is for an amount greater than $5,000, but less than $500,000, the prime contractor must use its "best efforts" to provide subcontracting opportunities for minority firms.

2. When the contract is for $500,000 or more and offers "substantial subcontracting opportunities," the prime contractor must take affirmative steps to ensure the fair consideration of minority firms as subcontractors.

B. The Interagency Committee on Minority Business Enterprise, OMBE, and individual agencies have not developed comprehensive procedures or goals for the minority subcontracting program.

C. Only one Federal agency, the Department of Defense (DOD), could provide data on minority subcontracting. The identifiable minority share of DOD subcontracting was $19 million or 0.3 percent of $5.7 billion in DOD subcontracts for the second half of FY 1973.

D. The minority subcontracting program does not encourage the participation of nonminority, female-owned firms and, with respect to firms owned by minorities, it is more a promise than a program. Its ineffectiveness may be traced to several factors:

1. Limiting affirmative action requirements to contracts for $500,000 or more exempts most Federal contracts.
2. The regulations require only limited recordkeeping by the prime contractors, and only 3 of the 10 agencies have developed procedures implementing the requirement.
3. The regulations do not provide any mechanism for the enforcement of the clause.
4. Only 2 of the 10 agencies surveyed have established procedures for monitoring contractor compliance with the minority subcontracting clause.
5. Although the key to the success of the program is the frequency with which contractors determine that their contracts offer substantial subcontracting opportunities, neither the agencies nor the Interagency Committee have developed guidelines to assist the liaison officers in making these determinations.
6. No satisfactory listing of potential subcontractors has been developed. Prime contractors depend on directories compiled by private corporations and some Federal agencies, but those lists are limited either by geographical area or industrial classification.
7. The regulation has no provision that requires the use of incentive fee clauses to motivate prime contractors to use minority subcontractors. Neither are Federal agencies urged to consider contractors' commitment to the program as a factor in evaluating potential prime contractors.
8. The program has not been implemented enthusiastically by the contracting officers or the liaison officers of the major government contractors.

STATE AND LOCAL CONTRACTING

I. Minorities and Women as State and Local Contractors

A. State and local governments purchased $62.5 billion in goods and services from the private sector in FY 1972. Minorities and female-owned firms, however, received less than seven-tenths of 1 percent of the contracting dollars of State and local governments which were able to provide data to the Commission. Unlike Federal procurement, a substantial portion of State and local purchases is for items bought in relatively small quantities from wholesalers and retailers. State and local governments also spend proportionately more than the Federal Government for construction. Since a large percentage of minority firms are retail and small construction companies, and female-owned firms are concentrated in retail industries, both the volume and nature of State and local contracting should provide extensive contracting opportunities for minority and female-owned firms.

B. A large portion of State and local contracting dollars are provided by Federal grants. The Federal Government has attempted through these grants to stimulate the participation of minorities in State and local contracting. Federal efforts, however, have not resulted in a significant increase in State and local contracting programs and awards for minorities and women. In fact, few governments are able to identify contracts awarded to minority and female-owned firms.

II. State and Local Contracting with Federal Grant Funds

A. Federal aid to State and local governments increased from $2 billion in FY 1950 to $45 billion in FY 1974.

B. Title VI of the Civil Rights Act of 1964 authorized the Federal Government to prohibit discrimination against minorities by State and local grantees in the operation of their programs.

C. Executive Order 11246 as amended and OMB Circular A-102 are two measures adopted by the Federal Government that are used as the basis for requiring State and local governments to undertake affirmative action programs to provide contracting opportunities to minorities.

D. Executive Order 11246, as amended in 1967 to include a sex discrimination provision, prohibits discriminatory hiring practices in federally-assisted construction projects.

1. Hiring goals for minorities and women are imposed on contractors by local government officials, union officials, and contractor associations under the order.
2. If a jurisdiction with a large concentration of minorities does not submit an acceptable plan, the Secretary of Labor may impose a mandatory plan on the area.
3. The voluntary and mandatory plans that contain minority and female subcontracting clauses are rarely enforced by Federal agencies and State and local governments.
4. The Office of Management and Budget authorizes Federal agencies to require grantees to undertake affirmative action to ensure greater utilization of minority businesses through OMB Circular A-102. Female-owned firms are not included.
5. Implementation of the circular's minority contracting provision by Federal agencies has been limited to paraphrasing the language in agency grant agreements, but they do little to ensure that State and local governments are in compliance with it.

III. Contract Awards to Minorities and Women

A. Only 3 of the 11 jurisdictions that provided contracting data to the Commission awarded more than 1 percent of their contracts to minority or female-owned firms. The average for all jurisdictions was six-tenths of 1 percent for minorities and four-one-hundredths of 1 percent for women.

B. On the whole, State and local governments have not significantly increased the award of contracts for services, materials, and supplies to either minority or female-owned firms.

IV. State and Local Special Contracting Programs

A. Only 10 of the 76 jurisdictions that responded to the Commission's questionnaire, or 13.1 percent, indicated that they had developed special contracting programs.

B. The contracting programs range from those directed exclusively toward minority and female-owned businesses to those geared toward all small businesses. Their aim is to increase the number and dollar amount of contracts awarded to already competitive minority and female-owned firms.

C. The programs identified by the Commission are based on either administrative or statutory authority.

1. Programs based on administrative authority concentrate on informing minorities and/or women of contracting opportunities or providing them relief from bonding requirements. The most effective are the federally-assisted construction projects. The following programs under administrative authority have potential for increasing contracting opportunities for minorities and/or women:

- The Los Angeles program directs contractors to advertise invitations for subcontracting bids in the minority news media, contact minority contractor organizations for referral of potential subcontractors, and contact other sources likely to yield minority contractors.

- A program in Long Beach, California, implemented an educational forum for minority and female entrepreneurs, in addition to focusing on Federal and local mandates directing the solicitation of minority and female subcontractors. The procurement officer also developed a list of minority and female-owned firms and regularly attends minority business seminars.

- A similar program in Los Angeles County includes a minority vendors program, primarily for the purchase of supplies. A key element of the program is a requirement that all informal offers be directed to at least two minority vendors.

- A special bonding program was initiated in Philadelphia with an insurance company to provide bonds for all suppliers whose contracts range between $2,000 and $20,000 to increase minority contracting in the city.

2. The following factors hamper the success of programs based on administrative authority:

   - Statutes or charters in most jurisdictions with contracting programs based on administrative authority require competitive bidding, which presents a major obstacle to establishing programs for negotiating contracts without competitive bidding. Therefore, administrative programs are limited to providing information, developing bidding lists, and encouraging minorities and women to submit bids.

   - The unwillingness of many contracting officers to abandon long-established contracting practices not directed toward minorities or women is an obstacle to effective implementation of special contracting programs.

   - Efforts to increase the number of minority and female firms on bidders' lists have been thwarted by contracting practices, such as requiring minority and female-owned firms to comply with stringent prequalification standards.

- Without legislative authority or strong executive support, contracting officers do not feel justified in diverting staff resources to special efforts to aid minorities or women.

3. Statutes and ordinances provide the authority for set-aside contract programs and programs with informal bidding procedures. The Commission identified only 1 of each from the 76 responses to its questionnaires to State and local governments. Both have potential, but neither has been particularly successful in increasing contract awards to minorities and women.

   - The Illinois Small Business Purchasing Act authorizes a formal set-aside program in which contracts are withdrawn from general competitive bidding and reserved for the exclusive bidding of small firms, particularly minority and female-owned firms. If fewer than three firms respond to an invitation to bid or if the acceptance of the lowest bid would mean paying an unreasonable price, the bids are rejected and the contract is opened for bidding by all firms.
   - The Commission identified one program in Denver, Colorado, that has informal bidding procedures established by legislation. The Denver small purchase ordinance authorizes informal bidding on any contract for supplies and services totaling less than $5,000 and removes requirements for performance bonding and prequalification for firms filling these contracts.

V. Limitations Common to all State and Local Special Contracting Programs

A. Most all of the programs suffer from poor dissemination of information to minorities and women, as well as from poorly-trained staff limited by their size.

1. The failure to receive adequate notice of contracting opportunities is a major factor limiting the effectiveness of special contracting programs. Only 23.8 percent of the minority and female-owned firms interviewed were aware of any State or local contracting opportunities being offered.

2. Informal bidding procedures are not well advertised in minority media, and State purchasing offices are remote from most minority firms.
3. Only one program surveyed had staff members who demonstrated an awareness of the distinct problems of firms owned by minorities and women and the need for affirmative action to increase their participation in State and local contracting. Furthermore, the Commission found: (a) a low ratio of minority and female buyers and construction engineers in contracting staffs; and (b) negative and even hostile attitudes among State and local procurement officers toward minority and female-owned firms.
4. Program staffs have not been given any special training for implementing the programs in their jurisdictions.

VI. Pending Legislative and Administrative Measures to Create New Programs

A. State and local contracting officials indicated that the most effective special programs are the contract set-aside and programs where strong leadership is exercised by chief executives. Thus, several jurisdictions have sought legislative authority before implementing any business development programs, but none has been enacted.

1. The Arkansas Small Business Purchasing Bill would have provided for establishment of a small business bidders' list and the setting aside of certain categories of commodities, equipment, and services for the restricted bidding of small firms. The bill died in committee.
2. House Bill 743 in Pennsylvania would have created a minority business development program in the State department of commerce. An amendment to the bill specifically included female-owned firms under the definition of minority business. This bill also died in committee.

B. A few other jurisdictions have proposed other measures, such as commitments to develop minority and female business programs.

1. The Governor of Mississippi pledged to establish procedures for directing State contracts to the minority business community.
2. The City Council of Kansas City, Missouri, adopted a resolution requesting the city manager to implement new procedures to facilitate the participation of minority and female-owned businesses in contracting. Kansas City is one of very few local jurisdictions that views female contractors as equally disadvantaged but distinct from minority business people.

RECOMMENDATIONS

FEDERAL CONTRACTING

I. Minorities and Women as Federal Contractors. Within the next 5 years, the Federal Government should increase the annual dollar value of its contracts and subcontracts with minority males, minority females, and nonminority, female-owned firms to an amount at least equal to their representation in all American businesses. This means that in FY 1980, for example, if minority males own 5 percent of all businesses, they should be awarded at least 5 percent of the total dollar amount of all Federal contracts. The same formula should be applied to minority and nonminority, female-owned businesses after their number has been determined by a census.

II. Data on Minorities and Women as Contractors

A. The Interagency Committee on Minority Enterprise's Task Force on Data should formulate uniform procedures for collecting and reporting information on government contracts awarded to firms owned by minorities and women. The owners of these firms should be cross-classified by sex for the following groups: (1) white; (2) black; (3) Americans of Spanish-speaking background--(a) Mexican Americans, (b) Puerto Ricans, and (c) others; (4) Native Americans (Indians); and (5) Asian Americans.

B. The Bureau of the Census should immediately conduct a census of female-owned firms tabulated by the following racial and ethnic groups: (1) whites; (2) blacks; (3) Americans of Spanish-speaking background--(a). Mexican American, (b) Puerto Ricans, and (c) others; (3) Native Americans (Indians); and (4) Asian Americans. Thereafter, a census should be conducted every 3 years.

C. The Bureau of the Census should revise its Census of Minority Businesses to account separately for the following minorities: (1) blacks; (2) Americans of Spanish-speaking backgrounds, (a) Mexican American, (b) Puerto Ricans, and (c) others; (3) Native Americans (Indians); and (4) Asian Americans. These data should be classified by sex.

III. Meeting the Needs of Firms Owned by Minorities and Women

A. SBA, IHS, BIA, and other civilian agencies should make maximum use of cash advances to minority and female contractors, as authorized by 41 C.F.R. Section 1-30.400, to assist these firms in meeting their working capital needs.

B. The Interagency Committee on Minority Enterprise in cooperation with OMBE, SBA, IHS, and BIA should develop programs that provide for:

1. Exerting special efforts to involve minority and female-owned businesses in manufacturing, construction, and research and development contracts.
2. Training contracting specialists to increase their awareness of the needs of minority and female-owned firms and the merits and objectives of special efforts to provide them contracting opportunities.
3. Encouraging Federal agencies to recruit actively and to employ a larger proportion of minorities and women as contracting specialists, particularly in supervisory and policymaking jobs.
4. Directing more Federal loans to minority and female-owned businesses that have potential for government contracting.
5. Improving the flow of information on bidding and negotiating opportunities by such means as establishing a section for advertising potential contracts for minority and female-owned firms in the Commerce Business Daily.

IV. Three Special Contracting Programs

A. Federal efforts to implement special contracting programs must be accompanied by a strong commitment by the heads of all Federal agencies and departments. This commitment must be communicated in forceful language to contracting personnel at all levels. There should also be better coordination among the Interagency Committee on Minority Enterprise, SBA, OMBE, and all Federal agencies responsible for implementing special contracting programs.

B. Establishing the Eligibility of Women for Special Contracting Programs

The President should issue an Executive order establishing a national policy declaring women as a group to be socially and economically disadvantaged and, therefore, eligible for existing business development assistance programs, especially the contracting programs discussed in this report. The President should also:

1. Direct SBA to revise its regulations to reflect more liberal criteria in determining the eligibility of nonminority, female-owned firms to participate in SBA programs for the socially and economically disadvantaged.
2. Direct SBA and other Federal agencies to increase the number and dollar value of contracts available to the 8(a) and minority subcontracting programs to accommodate an increase in the participation of minority and nonminority, female-owned firms, while not diminishing resources for minority male-owned firms.
3. Direct that SBA's Office of Business Development be staffed by persons concerned about minority and female business development, and the number of minorities and women on the staff be increased commensurate with the increased responsibility occasioned by bringing women into the program.

4. Create a task force composed of representatives of OMBE, SBA, Department of Labor's Women's Bureau, the Citizens' Advisory Council on the Status of Women, the President's Task Force on the Rights and Responsibilities of Women, and representatives of women's business organizations to develop and submit a detailed plan for a special business development program for women within 1 year.
5. Direct OMBE to compile a comprehensive directory of female-owned firms cross-classified by race.

C. Goals and Objectives.

The Interagency Committee should set goals for developing a specified number of competitive construction, manufacturing, and research firms for the 8(a) subcontracting program, the Buy Indian program, and the minority subcontracting program.

V. The 8(a) Program

A. SBA, OMBE, and the Interagency Committee on Minority Business Enterprise should establish a comprehensive business development strategy, including criteria to be followed by regional personnel administering the 8(a) program. The strategy should cover but not be restricted to:

- Defining clearly what is meant by the term "attaining competitive status."
- Describing the manner in which the 8(a) program is to assist socially or economically disadvantaged firms to become competitive.
- Prescribing steps 8(a) firms must take to attain competitive status.
- Devising methods for the participation of socially or economically disadvantaged firms in manufacturing, construction, and research, development, and demonstration contracts.

B. The President should seek an amendment to the Small Business Act that would authorize the appointment of an executive level, associate administrator exclusively for the 8(a) subcontracting pro-

gram. Pending legislative action, the Office of Business Development (OBD) should be transferred to the Associate Administrator for Minority Enterprise. Regional staff resources for OBD should be increased to enable the program to operate without borrowed personnel. These measures would alleviate problems resulting from a conflict of commitment within SBA's headquarters and regional offices.

C. OBD should be staffed by persons concerned about minority and female business development, and the number of minorities and women on the staff should be increased at least to the level requested by SBA in its FY 1975 budget.

D. SBA should appoint skilled procurement specialists to OBD staffs who can match contracts with the appropriate contractors. These specialists should also be skilled at employing business development resources in administering contracts.

E. The 8(a) program should be used to increase the overall competitiveness of minority and female-owned firms in manufacturing construction, research, development, and demonstration contracts.

F. Federal agencies participating in the 8(a) program and SBA should increase the number and average dollar value of 8(a) contracts so that 8(a) firms are better able to improve their development potential.

G. Heads of Federal agencies should demonstrate their commitment to the 8(a) program by designating staff at every level to watch for potential 8(a) contracts.

H. SBA and the Interagency Committee should develop guidelines for the selection of potential 8(a) contracts by the agencies. They should provide for:

1. Using business plans to project the total dollar volume and industrial classification of contracts needed to provide adequate support for 8(a) firms to achieve competitive status.
2. Requesting that all procurement needs within the agencies be sent to their minority-female business development specialists to be screened for 8(a) contracting potential.
3. Establishing procedures to inform the agencies of the classifications and qualifications of 8(a)-approved firms.

I. SBA should develop comprehensive uniform standards for approval of firms for participation in the 8(a) program and provide minority and female contractors sufficient technical assistance in developing business plans, so that the plans can be used as reliable bases for approval.

J. SBA should take steps to improve the match of contracts with contractors by formulating specific guidelines for its business development specialists to follow. Federal agencies should be allowed more discretion in matching contracts with contractors, but the final selection and terms of the contracts should be subject to SBA's approval.

K. SBA should coordinate and fully utilize available resources to assist 8(a) contractors by coordinating financial and technical assistance programs, thus giving them maximum support in developing their marketing capabilities.

L. SBA should develop criteria and procedures for terminating and graduating firms from the 8(a) program. The criteria should establish minimal performance levels for determining continued 8(a) eligibility. SBA should also require notifications of par-participating firms by certified mail of their termination or graduation.

VI. The Buy Indian Program

A. The Interagency Committee on Minority Enterprise and OMBE should assume an active role in coordinating and monitoring the Buy Indian program. The program also should be more clearly defined to exploit fully its potential for Indian business development.

B. The Interagency Committee, in cooperation with the BIA and IHS, should develop a strategy for implementing the Buy Indian Act to provide for:

- Assigning IHS and BIA a specific number and dollar value of Buy Indian Act contracts to be awarded to Indian tribes and commercial firms each fiscal year.
- Directing area offices within each agency to compile lists (designating the sex of owners) of Indian tribes and commercial firms with potential for providing needed goods and services.
- Assigning technical assistance resources to Indian tribes and commercial firms that are tailored to their needs.
- Training contracting specialists in the implementation of the goals and objectives of the Buy Indian Act.
- Disseminating information on the program to Indian entrepreneurs and tribes.

C. The Interagency Committee should appoint a task force of representatives from the Department of the Interior and HEW to develop and propose uniform Buy Indian regulations for BIA and IHS, which should include:

- Redefining "products of Indian industry" in a broader manner to provide the widest possible benefit from the Buy Indian program.
- Deciding the extent to which contracting officers can exceed competitive prices in awarding contracts.

D. The Commissioner of BIA and the Director of IHS each should appoint coordinators to monitor the performance of the Buy Indian program for:

- Consistent interpretations of the program's regulations.
- Compliance with policy directives.
- Efforts to increase the participation of Indian commercial firms in the program.
- The compilation and continued updating of lists of Indian firms, by sex of owners and capabilities.

E. OMBE and the agencies responsible for Indian programs should compile and maintain a complete, accurate, and current directory of all Indian firms.

F. The Interagency Committee should conduct educational seminars on the Buy Indian program and disseminate information on the program and potential contracting opportunities throughout Indian communities.

VII. The Minority Subcontracting Program

A. The Interagency Committee's Task Force on Government Procurement, GSA, DOD, and other Federal agencies should revise the minority subcontracting regulations to provide for:

- Imposing affirmative subcontracting requirements on major contractors with contracts of $100,000 or more instead of $500,000.
- Directing prime contractors to maintain and submit quarterly reports on their minority and/or female subcontracting programs.
- Imposing a penalty on prime contractors of up to 1 percent of the value of the contract for failing to fulfill minority and/or female subcontracting responsibilities.
- Including a provision requiring consideration of commitment to minority subcontracting as a factor when determining the amount of the fee to be allowed or paid.
- Directing that past implementation of the minority subcontracting program be a factor in evaluating contractors' proposals on negotiated procurements.

B. The Interagency Committee on Minority Enterprise, OMBE, and all Federal agencies should develop goals and strategies for effectively implementing the minority subcontracting program.

1. The minority subcontracting clause should be used as a means for increasing subcontract awards to eligible minority and female firms on prime contracts involving construction, transportation, weapon and electronic systems development, government-owned contractor-operated facilities, and research and development.
2. OMBE should award subsidies to prime contractors who provide substantial subcontracting opportunities and technical assistance for eligible minority and female firms on contracts listed in B-1 to enable them to pay the cost of providing the technical assistance.
3. OMBE should give direct grants to minority and female firms whose staffs need training to participate effectively in prime contracts noted in B-1.

C. Federal agencies should establish procedures to be followed by small business specialists and contracting officers for monitoring contracts for compliance with the minority subcontracting clause. Agency staffs should also be required to list prime contracts offering subcontracting opportunities and to collect data on the number and types of subcontracts awarded to minorities and women.

D. The Interagency Committee, OMBE, and other Federal agencies should institute procedures to inform contractors of their responsibilities and provide guidance for them.

E. OMBE should compile a comprehensive and accurate directory of minority males to supplement the directory recommended in IV B-5.

STATE AND LOCAL CONTRACTING

A. State and Local Governments

1. Within 5 years, State and local governments should increase the number and total dollar value of contracts and subcontracts awarded to minority males, minority females, and nonminority female-owned firms to an amount equal to their representation in the business communities of each jurisdiction.

B. Federal Action

1. The Interagency Committee on Minority Enterprise and GSA should monitor Federal agencies to determine the extent to which they are requiring State and local governments to establish contracting programs for minorities and women.
2. OMB should amend the minority enterprise provision of Circular A-102 to require State and local governments to increase contract awards to women as well as minorities.
3. Federal agencies should enforce Federal policies and procedures designed to stimulate the development of special contracting programs by State and local governments, including affirmative action programs required by Executive Order 11246 as amended and Circular A-102.
4. Agencies responsible for monitoring agency enforcement of Circular A-102 and the Interagency Committee should develop a system for the uniform collection and reporting of data, cross-classified by race and sex, by Federal agencies on contracts awarded to minorities and women at the State and local level. Federal agencies administering grant programs should require all State and local grantees to comply with the reporting requirements.

C. State and Local Action

1. State and local governments should establish special contracting programs to increase contract awards to minority and female-owned firms. Jurisdictions that have special programs for minorities only should extend their coverage to include women and increase resources to accommodate them, without thereby diminishing resources for minorities.
2. State and local legislative bodies should amend statutes and charters that require competitive bidding in all circumstances to permit the selected negotiation of contracts without competitive bidding.
3. Training programs should be established by State and local governments to educate contracting officials to the needs of minority and female-owned firms and the benefits of contracting with them, dispelling the unjustified, negative perceptions concerning the productivity of such firms.
4. Rigid prequalification standards, such as requiring firms to have been in business for a year in order to bid on State and local government contracts, should be abolished where it is demonstrated that such practices are not essential to good contract administration.
5. State and local legislative bodies and executive officers should support minority and female business development by allocating sufficient staff resources to assist the firms.
6. Governors, county executives, and mayors should review existing procurement laws of their jurisdictions and determine the extent to which these laws permit the establishment of contract set-aside programs. If there is no authority for contract set-aside programs, the executives should propose legislation for such authority.

7. In the absence of legislation authorizing contract set-aside programs, State and local government officials should demonstrate a commitment to foster minority and female business development by establishing minority and female vendor and informational programs. They should also carry out the following:

   - Develop lists of minority and female-owned firms which are to receive copies of all invitations to bid.
   - Publish in minority and female-oriented media and trade associations notices of invitations to bid, and the names of departments and purchasing offices and goods or services to be procured.
   - Initiate special efforts to prequalify minority and female-owned businesses for bidding on State and local contracts.
   - Recruit and employ minorities and women and other individuals who are aware of and sympathetic with the problems of firms owned by minorities and women and the need for affirmative action to increase their participation in State and local contracting. These individuals should be appointed to either the executive offices or to each procurement office to oversee special efforts to involve minorities and women in contracting.
   - Develop and implement special training programs for procurement office personnel to learn how to administer special contracting programs for minorities and women.
   - Conduct seminars to inform minorities and women how to prepare bids and proposals in order to sell to their State, city, and local governments.
   - Establish comprehensive data collection systems that would cross-classify contracts by the race and sex of the contractor and by the type of product or service purchased.

8. State and local governments, in complying with Executive Order 11246, as amended, should require that each prime contract include a clause providing for an affirmative action plan to ensure that minorities and women are given an opportunity to bid and negotiate on subcontracts.

9. States without offices of minority business enterprise should establish programs that cover both minority and female-owned businesses. States with OMBE's should expand their scope and increase their resources to include women.

10. State OMBE's should encourage the exchange of information on special contracting programs between State and local governments through national associations, such as the League of Cities.

APPENDIX A

METHODOLOGY FOR SURVEYS OF FEDERAL, STATE, AND LOCAL GOVERNMENTS; AND INTERVIEWS WITH MINORITY AND FEMALE OWNERS AND MANAGERS OF BUSINESSES

SURVEY OF FEDERAL AGENCIES

The Commission surveyed 10 Federal agencies and offices responsible for Indian programs, the Bureau of Indian Affairs (BIA) of the Department of the Interior, and the Indian Health Service (IHS), Department of Health, Education, and Welfare.

The 10 agencies were selected on the basis of the size of their procurement operation and their reported participation in the Minority Enterprise Program. Agencies that awarded numerous or substantial contracts to minority firms in FY 1972 were included, as well as those agencies that awarded very few contracts to such firms. Since no data were kept which would indicate which agencies awarded contracts to firms owned by women, agencies contracting for goods or services likely to be provided by female-owned firms were included. Also, a conscious effort was made to include agencies that purchase a variety of goods and services, including construction, manufactured goods, and research services.

Questionnaires sent to the 10 Federal agencies, the BIA, and the IHS requested the following information:

1. The number and dollar value of contracts awarded to minorities and women, according to construction, manufacturing, and service standard industrial classifications.
2. The number and dollar value of subcontracts awarded to minorities and women.
3. Whether the agency established goals for minority and female contractors.
4. Whether the agency had established procedures for implementing special contracting programs.
5. Whether the agency had established procedures for disseminating information on special contracting programs.

A followup letter also was sent to the same agencies asking whether they were making any special effort to award contracts to women and whether they maintained data on the number and dollar amounts of contracts awarded to female-owned firms.

Subsequently, interviews were conducted with 53 Federal contracting officials in headquarters and three regional offices (San Francisco, California; Chicago, Illinois; and Denver, Colorado). These officials were selected on the basis of their familiarity with or responsibility for operating the 8(a), minority subcontracting, or Buy Indian programs. The objectives of these interviews were to obtain a clearer understanding of how the agencies and the Small Business Administration were carrying out their responsibility for implementing special contracting programs and to determine what problems they confronted in doing so.

Ten headquarters contracting officials were interviewed and asked a series of questions pertaining to their agencies' contracting and 8(a) policies. Additional questions focused on three major areas:

(a) Barriers to minorities and women in government contracting.

(b) Measures being employed by agencies to assist minorities and/or women to overcome these barriers.

(c) The potential of firms owned by minorities and women as government contractors.

The remaining 43 regional and operating contracting specialists were asked a series of 25 questions on operating procedures for the 8(a), minority subcontracting, or Buy Indian programs. Questions dealt with the following issues:

(a) Criteria for identifying requirements suitable for 8(a).

(b) Whether there were any particular problems associated with doing business with minority-owned firms.

(c) Whether the specialists could estimate the volume of business done with female-owned firms.

(d) Procedures for negotiating, pricing, and awarding contracts through the special contracting programs.

(e) Methods used in determining the level of technical assistance an 8(a) firm required.

(f) Methods used in setting annual goals for the special contracting programs.

(g) Problems inherent in the operating procedures as they affect SBA, the contracting agency, and the participating firm.

Responses to these questions were in narrative form and were relied upon in the Commission's analysis of the operation of the 8(a), minority subcontracting, and Buy Indian programs.

SURVEY OF STATE AND LOCAL GOVERNMENTS

Because of the lack of information on State and local programs for minority and female business development, the Commission sent questionnaires to all 50 States, 51 cities, and 36 county governments. The cities selected were those whose Standard Metropolitan Statistical Area included at least 500 minority-owned firms, according to the 1969 Census of Minority Businesses. An effort was also made to include those cities with a large number of minority construction and manufacturing firms. Since there were no data to indicate where female-owned firms were located, it was assumed that they also would be concentrated in the same urban areas. In addition, other areas were selected on the basis of having a minority population of 50,000 or more. Counties selected were those in which the major cities were located, provided the counties had a separate governmental structure. The questionnaire was designed to determine whether:

1. The jurisdiction could identify minority and female contractors by sex, ethnicity, and race.
2. The jurisdiction was providing business development assistance to minorities and females.
3. The jurisdiction had special contracting programs for minorities and women.
4. The jurisdiction had developed a special data collection system to determine the extent to which contracts were being awarded to minorities and women.
5. Legislative or administrative proposals were pending to establish special contracting programs for minorities and women in the jurisdiction.

Approximately 55 percent, or 76 of the 137 jurisdictions surveyed, responded to the questionnaire. See table 17 for a list of the responding jurisdictions.

Followup questionnaires were sent to five jurisdictions--all States. These were the only jurisdictions of the 76 responding to the Commission's questionnaire that indicated they collected data on contracts awarded to minorities and women. The States were Ohio, Texas, Washington, Minnesota, and Missouri. This questionnaire requested the number and dollar amounts of contracts awarded to minorities and women, cross-classified by race, ethnicity, and sex. Generally, the data received were sketchy and not cross-classified.

The Commission conducted interviews with 50 State and local contracting specialists in the 10 jurisdictions with special contracting programs for minorities and women. The purpose of these interviews was to determine the characteristics of the program, how they were being implemented, and whether they were producing results.

Facsimile

OMB No. 115-573001
Approval expires Sept. 30, 1973

QUESTIONNAIRE TO STATE AND LOCAL
GOVERNMENT REGARDING THEIR GENERAL
AND MINORITY PROCUREMENT PROGRAMS

GENERAL PROCUREMENT

1. Do you have a procedure for determining the level of minority and female participation in your general procurement program (as distinct from any special programs to purchase from minority or women suppliers)?

   YES _____ NO_____

   If "YES," attach a statement explaining the procedures followed.

ASSISTANCE TO MINORITY- AND WOMEN-OWNED FIRMS

2. Does your government assist minority- and women-owned businesses in any of the ways listed below?

   a. Loan programs YES_____ NO_____

   b. Technical assistance YES_____ NO_____

   c. "Packaging" [207] YES_____ NO_____

   d. Other (Specify) YES_____ NO_____

   _____

   _____

   Attach a brief statement describing the activities checked.

3. If the answer to 2. is "NO," does your government plan to establish a policy or program for assisting businesses owned by minorities and women in the near future?

   YES_____ NO_____

4. If your answer to 3. is "YES," indicate whether legislative or executive action is pending.

   YES_____ NO_____

_____

207. "Packaging" refers to assistance in the development of business proposals, presentation to SBA, and the provision of on-going technical assistance.

5. Does your government have a policy of assisting minority- and women-owned businesses through a special contracting program? [208]

YES_____ NO_____

Instruction: If the answer to question 5. is "YES," respond to items 8-11. If the answer to question 5. is "NO," respond only to items 6-7.

6. If the answer to 5. is "NO," does your government plan to establish a policy or program of assisting minority and women business development through special contracting programs?

YES_____ NO_____

7. If the answer to question 6. is "YES," indicate whether legislative or executive action is pending.

YES_____ NO_____

8. Provide copies or concise statements of your contracting policies, programs, and operating instructions designed to assist firms owned by minorities and women.

a. On what date was your special contracting program initiated? _____
(month and year)

b. Check below the authority for the program and attach copies of relevant documents.

_____(1) Statute

_____(2) Regulation

_____(3) Executive order

_____(4) Administrative directive

c. Does your program for assisting minority- and women-owned businesses through special contracting procedures include a provision for subcontracting?

YES_____ NO_____

208. A minority business, as defined by the Small Business Administration, is a business concern which is at least 50 percent owned and managed by individuals from racial and ethnic minorities including the following: Blacks; American Indian, Eskimos, and Aleuts; Spanish-surnamed Americans (including Mexican Americans, Puerto Ricans, and Cubans); and Asian Americans.

d. Does your program for assisting minority- and women-owned businesses include a provision for awards to minorities or women to establish concessions on government facilities or properties?

YES_____ NO_____

9. Which of the following groups does your special contracting program seek to identify and serve?

___Blacks

___American Indians

___Eskimos

___Aleuts

___Asian Americans

___Spanish-speaking [209]

___Mexican Americans

___Puerto Ricans

___Cubans

___Other Central or South Americans

___Spanish not specified

___Women

___Other (specify)

_____

_____

10. Attach a copy of the forms or format used in collecting data on the participation of the above checked groups in your special:

a. Prime contracting program

b. Subcontracting program

c. Concessions program

11. Please provide the following information concerning the person principally responsible for administering your minority and women business development program:

a. Name_____

Title_____

Agency_____

Area Code_____ Telephone No._____

209. The categories of Spanish-speaking used here are consistent with those used in the U.S. Bureau of the Census, Minority-Owned Businesses: 1969, MB-1, U.S. Government Printing Office, Washington, D.C. 1971.

b. The size of his or her professional staff: _____

The size of his or her budget for the last full fiscal year (FY 19__): $_____

c. The name, title and address of his or her superior:

_____

_____

_____

_____

TABLE 17. JURISDICTIONS RECEIVING THE COMMISSION'S QUESTIONNAIRE REGARDING STATE AND LOCAL CONTRACTING

States

State	Responded	Special Assistance Program	Pending Leg. or Exec. Action	Special Contracting Program	Pending Leg. or Exec. Action	Participation in General Procurement
Alabama	X					
Alaska						
Arizona	X	No	No	No	No	No
Arkansas	X	No	No	No	No	No
California	X	Yes		No		No
Colorado						
Connecticut						
Delaware						
Florida	X	No	No	No	No	No
Georgia						
Hawaii	X	Yes		No	No	No
Idaho						
Illinois	X	Yes		No	No	No
Indiana	X	No	Yes	No	Yes	No
Iowa	X	No	No	No	No	No
Kansas	X	No		No		No
Kentucky	X	Yes		No	Yes	No
Louisiana						
Maine						
Maryland	X	No	Yes	No	No	No
Massachusetts	X	Yes		Yes		No
Michigan	X	No	No	No	No	No
Minnesota	X	No		No		Yes
Mississippi	X	Yes		No	Yes	No
Missouri	X	No		No	Yes	Yes
Montana						
Nebraska						
Nevada	X	No	No	No	No	No
New Hampshire						

TABLE 17. (continued)

States (continued)

State	Responded	Special Assistance Program	Pending Leg. or Exec. Action	Special Contracting Program	Pending Leg. or Exec. Action	Participation in General Procurement
New Jersey	X	Yes	No	No	No	No
New Mexico	X	No	Yes	No	No	No
New York						
N. Carolina						
N. Dakota	X	No	No	No	No	No
Ohio	X	Yes	No	No	No	Yes
Oklahoma						
Oregon						
Pennsylvania	X	No	Yes	No	Yes	No
Rhode Island	X	No	No	No	No	No
S. Carolina						
S. Dakota	X	No	Yes	No	Yes	No
Tennessee	X	Yes		No		No
Texas	X	Yes		No	Yes	Yes
Utah						
Vermont	X	No	No	No	No	No
Virginia	X	No	No	No	No	No
Washington	X	Yes	No	No	No	No
West Virginia						
Wisconsin	X	No	Yes	No	No	No
Wyoming						

TABLE 17. (continued)

Cities

City	Responded	Special Assistance Program	Pending Leg. or Exec. Action	Special Contracting	Pending Leg. or Exec. Action	Participation in General Procurement
Albuquerque	X	No	No	No	No	No
Atlanta	X	No	No	No	No	No
Bakersfield	X	No		No		No
Baltimore						
Birmingham						
Boston						
Brownsville						
Charleston						
Charlotte						
Chicago						
Cincinnati						
Cleveland	X	Yes		No		No
Columbus	X	No	No	No	No	No
Corpus Christi	X	No	No	No	No	No
Dallas	X	No	No	No	No	No
Denver	X	Yes		Yes		No
Detroit						
El Paso						
Fresno	X	Yes				No
Gary	X	Yes				
Hammond	X	No	No	No	No	No
Honolulu	X	No	No	No	No	No
Houston	X	No	No	No	No	No
Indianapolis						
Jacksonville	X	Yes		No	No	No
Kansas City	X	No	No	No	No	No
Laredo						
Long Beach	X	Yes	No	No	No	Yes
Los Angeles	X	Yes	No	Yes		Yes
Memphis	X	No	No	No	No	No
Miami						
Milwaukee						

TABLE 17. (continued)

Cities (continued)

City	Responded	Special Assistance Program	Pending Leg. or Exec. Action	Special Contracting	Pending Leg. or Exec. Action	Participation in General Procurement
Minneapolis						
Mobile						
Newark						
New Orleans						
New York						
Norfolk	X	Yes		No	No	No
Philadelphia	X	No	No	No	No	No
Phoenix						
Pittsburgh						
Richmond						
Sacramento	X	No	No	No	No	No
St. Louis	X	No	No	No	No	No
St. Paul	X	No				No
San Antonio	X	No	No	No	No	No
San Bernardino	X	No	Yes	No	No	No
San Diego	X	Yes	No	Yes	No	Yes
San Francisco						
San Jose	X	Yes				
Tucson	X	Yes		No	No	No

TABLE 17. (continued)

Counties	Responded	Special Assistance Program	Pending Leg. or Exec. Action	Special Contracting	Pending Leg. or Exec. Action	Participation in General Procurement
			Counties			
Allegheny, Pa.						
Baltimore, Md.	X					
Bernalillo, Tex.						
Bexar, Tex.						
Cameron, Tex.	X	No	No	No	No	No
Charleston, S.C.						
Cook, Ill.	X	No	No	No	No	No
Cuyahoga, Ohio	X	Yes	Yes	No	No	No
Dade, Fla.						
Dallas, Tex.	X	No	No	No	No	No
Denver, Colo.						
El Paso, Tex.	X					
Essex, N.J.	X					
Franklin, Ohio	X	No	No	No	No	No
Fresno, Calif.						
Fulton, Ga.	X	No	No	No	No	No
Hamilton, Ohio						
Harris, Tex.						
Hennepin, Minn.	X	No	Yes	No	Yes	No
Jackson, Mo.						
Jefferson, Ala.	X					
Kern, Calif.						
Lake, Ind.						
Los Angeles, Calif.	X	Yes	No	No	No	No
Maricopa, Ariz.	X	No	No	No	No	No
Milwaukee, Wis.						
Mobile, Ala.						
Nueces, Tex						
Pima, Ariz.						
Sacramento, Calif.	X	No	No	No	No	No

TABLE 17. (continued)

Counties (continued)

Counties	Responded	Special Assistance Program	Pending Leg. or Exec. Action	Special Contracting	Pending Leg. or Exec. Action	Participation in General Procurement
St. Louis, Mo.						
San Bernardino, Calif.	X	No	No	No	No	No
San Diego, Calif.	X	Yes	No	No	No	No
Santa Clara, Calif.						
Shelby, Tenn.	X	No	No	No	No	No
Wayne, Mich.						

INTERVIEWS WITH MINORITY AND FEMALE OWNERS AND MANAGERS OF BUSINESSES

The Commission utilized an accidental nonprobability sampling of minority and female entrepreneurs to obtain their views and impressions about the problems they confront in efforts to increase their volume of government contracting and the effectiveness of special contracting programs. The interviewees were identified during May to August 1973.

The first problem faced by the project team in identifying the interviewees was to determine the universe of minority and female firms from which a selection could be made. Since the Bureau of the Census had conducted a census of minority businesses, identifying 322,000 firms (4.3 percent of all U.S. businesses) and the Office of Minority Business Enterprise had funded the development of directories of minority businesses, a comprehensive minority base was readily available. (The Census of Minority Businesses does not distinguish between firms owned by minority males and females.) In the absence of such a known base of female-owned businesses, however, the team initiated the following steps to develop a universe of firms owned by women:

(a). The team contacted representatives of the Center for Women Policy Studies, a group concerned with sex discrimination in credit; Advocates for Women, an organization urging governmental programs for women in business; the Southwest Business Conference; the Association of Indian and Chicano Businesswomen; the Spokeswoman, a feminist publication; the National Council of Negro Women; and Women in Construction, a group involved in assisting women to become journeypersons and subcontractors in the building trades. The Commission's Women's Rights Program Unit also was consulted for leads in identifying organizations and individuals that might have, or know of, lists of female entrepreneurs. This effort yielded little more than the study team's

being advised of an HEW-funded study by Wanda Banks Associates Inc., of women involved in evaluating HEW programs. This 8-month study (begun in October 1972) was intended as a "mini-census" of female-owned firms capable of contracting with HEW in fields other than construction, manufacturing, and building service. The Banks study group identified and surveyed over 143 women's associations, including the League of Women Voters, the National Federation of Business and Professional Women's Clubs, and the National Women's Political Caucus. They also surveyed some 2,850 local female business, civic, and related organizations for the names and locations of female entrepreneurs. Only 62 female-owned firms with government contracting potential were identified.

(b). The Small Business Administration's directory of firms approved for 8(a) contracting was screened for all businesses naming female principals. Of the 59 so thought to be female-owned, 38 were verified through telephone inquiries to be female-owned.

(c). A list of 125 female equal opportunity loan recipients, compiled by the SBA, similarly was reviewed. This yielded three firms with which the government might contract.

(d). Letters requesting lists of female-owned firms that had filed prequalification forms for submitting bids were sent to 10 Federal agencies responsible for most of the government's contracting. Only HEW had taken steps to obtain this information by issuing a contract for the development of a directory of female-owned firms which either had obtained contracts with HEW or had the potential for contracting with the Department.

(e). A roster containing an additional 99, primarily black, women owners of firms was secured from the report of the OMBE-sponsored National Conference on Business Opportunities held in June 1972. Twenty new firms were identified as capable of contracting with the Government.

A total of 324 female-owned firms were listed, but after adjustments to eliminate duplication among the various lists, there were 283 female-owned firms. Of this total of 283, 120 were considered to have the capability for government contracting.

2. Next, the project team determined the number of minority and female-owned firms whose business (goods and services sold) conformed with the industrial classifications in which governments contract. As a result, retailers and wholesalers, among others, were deleted from the 322,000 total minority firms and the 283 total female-owned firms identified by the Commission. This was easily done for minority firms covered by the Census of Minority Business, since it provides tabulations by standard industrial classification. (See table 18.) Despite the small universe of known female-owned firms, the absence of a census made this step more difficult than for male-owned firms. However, from the various lists, 120 of the 283 female-owned firms were in the proper industrial classification for government contracting.

3. To select potential interviewees, it was necessary to refer to various directories of potential minority contractors, since the Census compilation of minority businesses did not identify firms by name. Over 8,000 minority businesses--i.e., those in the appropriate industrial classifications--were found through SBA's list of 8(a) contractor eligibles, Try-Us (a directory of minority manufactors), HUD's minority contractor construction registry, and McDonnell Douglas' registry of minority contractors. (The 8(a) list was used in identifying 38 female-owned firms. Try-Us and the McDonnell Douglas and HUD registries were not useful in this regard.)

Table 18. MINORITY (MALE AND FEMALE) FIRMS AND FEMALE (MINORITY AND WHITE) FIRMS IN RELEVANT MAJOR STANDARD INDUSTRIAL CLASSIFICATIONS INTERVIEWED BY THE COMMISSION.

Industrial Classification	*No. of Minority-Owned Firms		No. of Female Minority-Owned Firms		No. Female Nonminority-Owned Firms	
	Total	No. Interviewed	Total	No. Interviewed	Total	No. Interviewed
Construction	29,695	23	5	4		
Manufacturing	8,016	26	6	2		
Service	49,416	27	80	11	29	21
Concessions (Service)		8		3		
Total	87,127	84	91	20	29	21

* Indicates total no. of minority-owned firms but not identified by male or female.

The comparable lists from which minority and female-owned firms were selected then contained the names of 8,000 of 87,127 minority-owned firms and 120 of 283 identified female-owned firms.

Finally, the team reconciled the locations of the minority and female-owned firms identified in "3" above with the eight areas selected for field visits. The selection of field sites was based upon their levels of Federal regional contracting activity and responses to questionnaires sent to 137 State and local governments to determine the nature and extent of their involvement in minority and female contracting and business development. Interview appointments then were made with as many of the female entrepreneurs as could be located and consented to be interviewed.

Interviews were conducted with 84--or 1 percent--of identified minority male-owned firms and with 20 minority females and 21 nonminority females--or 34.1 percent--of the females identified by the Commission staff as business owners. (See table 18.) These included 13 (34 percent) of 38 female-owned firms and 78 (4.4 percent) of the 1,744 minority

male-owned firms participating in the 8(a) program. These interviews were conducted in Arizona, California, Colorado, Illinois, New Mexico, New York, Pennsylvania, South Dakota, and Washington, D.C. Arizona and New Mexico were chosen to interview participants in the Buy Indian program, and New York and Washington, D.C., were selected because the Commission staff was able to identify more female-owned firms located in the two cities than in other cities which the Commission surveyed. Finally, interviews were conducted by telephone to reach female entrepreneurs located in other areas of the country the Commission staff did not visit for onsite interviews.

Most interviews were conducted in jurisdictions which indicated that they had established special contracting programs for minorities. Thus, since half of the special State and local programs were in California, a large percentage of the interviews were conducted there. Several retailers and wholesalers were chosen because they already had government contracts or were potentially able to sell to State and local governments. The Commission focused, however, on representatives of minority and female construction and manufacturing firms. Other interviews were conducted where government spending for hardware, construction, and services was substantial. The Commission tried to determine why these interviewees were not obtaining more government contracts and how they had fared in the special contracting programs. (See the interview guideline for minority and female entrepreneurs, page 168).

TYPE AND SIZE OF FIRMS WHOSE OWNERS WERE INTERVIEWED

The race, sex, type, size, and industrial classification of firms whose owners were interviewed are summarized in table 19. Tables 20 through 25 show the industrial distribution, gross receipts, and number of employees of these firms.

TABLE 19. RACE AND SEX OF THE OWNERS OF FIRMS INTERVIEWED

	Black	Spanish Speaking	Asian Indian	Other/White	Total
MANUF.					
Male	16	8	0	2	0	26
Female	2	0	0	0	0	2
Total	18	8	0	2	0	28
CONSTR.					
Male	10	9	1	3	0	23
Female	2	0	0	2	0	4
Total	12	9	1	5	0	27
SERVICE					
Male	17	6	0	4	0	27
Female	11	0	0	0	21	32
Total	28	6	0	4	21	59
DISTRIBUTION AND CONCESSIONS					
Male	4	3	0	1	0	8
Female	2	0	0	1	0	3
Total	6	3	0	2	0	11
TOTAL	64	26	1	13	21	125

(TABLE 19. CONTINUED)

	Black	Spanish Speaking	Asian	Indian	Other	Total
8(a) CONTRACTORS						
Male	39	24	1	1	0	65
Female	11	0	0	1	1	13
Total	50	24	1	2	1	78
BUY INDIAN CONTRACTORS						
Male				9		9
Female				2		2
Total				11		11
ALL OTHER						
Male	8	2	0	0	0	10
Female	6	0	0	0	20	26
Total	14	2	0	0	20	36
TOTALS						
Male	47	26	1	10	0	84
Female	17	0	0	3	20	41
Total	64	26	1	13	21	125

Interviews by Program Participation:

8(a)	78
Buy Indian	11
All Other	36
Total Interviewees	125

TABLE 20. TYPE AND SIZE OF FIRMS WHOSE OWNERS WERE INTERVIEWED

Type	No. of Firms	No. of Firms Reporting Gross Receipts	Average Gross Receipts	Average No. of Employees
Construction	27	26	$595,334	22.1
Manufacturing	28	22	$552,174	40.3
Services	75	25	$272,080	26.3
Distribution and Concessions	11	6	*$770,000	*12.7

*One company accounts for over 80% of $5.4 million of total gross receipts. When this firm is excluded, gross receipts average $215,000 and employees average 7.5.

TABLE 21. SIZE OF ALL FIRMS, BY GROSS RECEIPTS, WHOSE OWNERS WERE INTERVIEWED

Income	Construction	Manufacturing	Services	Distribution and Consessions	Total
$0 - 10,000	1	0	0	1	2
10,000 - 99,999	4	3	13	1	21
100,000 -499,999	11	10	13	2	36
500,000 - Over	10	9	5	3	27
Not Reporting	1	6	28	4	39
Total	27	28	59	11	125

TABLE 22. TYPE AND SIZE OF MINORITY MALE-OWNED FIRMS WHOSE OWNERS WERE INTERVIEWED

Type	No. of Firms	No. of Firms Reporting Gross Receipts	Average Gross Receipts	Average No. of Employees
Construction	23	23	$656,682	2.2
Manufacturing	26	22	$552,174	40.3
Services	27	12	$391,388	40.0
Distribution and Concessions	8	3	$250,200	8.5

TABLE 23. SIZE OF THESE MINORITY MALE-OWNED FIRMS BY GROSS RECEIPTS

Income	Construction	Manufacturing	Services	Distribution and Concessions	Total
$0 - 10,000	1				1
10,000 - 99,999	3	3	4		10
100,000 - 499,999	9	10	11	2	32
500,000 - Over	10	9	3	2	24
Not Reporting	0	4	9	4	17
Total	23	26	27	8	84

TABLE 24. TYPE AND SIZE OF FIRMS OWNED BY WOMEN WHOSE OWNERS WERE INTERVIEWED

Type	No. of Firms	No. of Firms Reporting Gross Receipts	Average Gross Receipts	Average No. Employees
Construction	4	3	$125,000	7
Manufacturing	2	-	-	-
Services	32	13	161,954	15.6
Distribution and Concessions	3	3	*1,400,000	*11

*One well established firm, which was owned by a black women, accounted for a major portion of the gross receipts for this category. If this firm is excluded, the average gross receipts for the remaining two firms was $22,700, and they each had one employee.

TABLE 25. SIZE OF THESE FEMALE OWNED FIRMS BY GROSS RECEIPTS

Income	Construction	Manufacturing	Services	Distribution and Concessions	Total
$0 - 10,000			0	1	1
10,000 - 99,999	1		9	1	11
100,000 -499,999	2		2		4
500,000 -Over			*2	1	3
Not Reporting	1	2	19		22
Total	4	2	32	3	41

*Two firms reported gross receipts of over $1 million. Both were owned by black women.

Interview Guideline

For

Minority and Female-Owned Firms' Representatives

1. Characteristics of firm:

Name of firm _____

Name of officer interviewed _____ Title_____

Location_____

Organizational Form_____

Length of time in business_____

Standard Industrial Classification or goods or services produced____

_____

Goods or services produced_____

Gross income from sales	No of Employees
1969 _____	_____
1970 _____	_____
1971 _____	_____
1972 _____	_____

Owned by minority _____ Women _____ Spanish Speaking _____

Asian _____ Aluet _____ Black_____ American Indian_____

2. Dissemination of Information

a. Are you aware of any special contracting program operated by your:

State-- yes _____ no _____

County-- yes_____ no _____

City-- yes _____ no _____

b. Are you aware of the following Federal special contracting programs:

SBA 8(a) Subcontracting Program _____

Minority Subcontracting Program _____

Buy Indian Act Program _____

Concessions Program _____

c. How did you hear of any of these programs?

Radio _____

T.V. _____

Business Organization _____

Government Publication _____

3. Has your firm ever bidded for any contracts offered by:

Federal Agencies yes _____ no _____

State Government yes _____ no _____

County Government yes _____ no _____

City Government yes _____ no _____

4. Has your firm been successful as a bidder for government contracts?

Yes _____ No _____

If so, indicate the number and dollar amount of contracts won.

1969 _____ _____

1970 _____ _____

1971 _____ _____

1972 _____ _____

5. Have you registered for participation in any of the contracting programs? If so, designate which programs:

		Date
Federal	_____	_____
State	_____	_____
County	_____	_____
City	_____	

6. Have you been rejected certification or registration in a special contracting program? Yes _____ No _____

a. If so, were you given a reason for the rejection? Yes ____ No ____

b. If a reason were given for your rejection, please describe the reason? _____

_____

_____

_____

7. Have you or members of your firm had any difficulties understanding the procurement regulations? Yes _____ No _____ If so, explain your difficulties. _____

_____

_____

_____

_____

8. If you have lost contract bids, which reasons are most often given for your not being awarded contracts?

Track record ___ _ ___

Expertise/record _____

Lack of working capital _____

Insurance and bonding _____

9. Generally, have you been a successful bidder for government contracts?

Yes _____ No _____

10. Are your government contracts for periods of:

Under 6 mos. _____

6 mos. to 1 year _____

1 to 2 years _____

Over 2 years _____

11. Do you believe that minority and/or women-owned firms are only invited to bid on contracts to provide services to minorities or in women related areas?

Yes _____ No _____

If yes, explain. _____

_____

_____

_____

_____

_____

_____

12. Do you believe that special contracting programs, as they are presently operated, are helping minority and women-owned businesses (those who are covered by the program)?

Yes _____ No _____

Please explain your answer. _____

_____

_____

_____

_____

_____

_____

13. Which programs are the most helpful?

8a Subcontracting _____

Minority Subcontracting _____

Buy Indian Program _____

State Programs _____

County Programs _____

City Programs _____

14. Do you find it necessary to obtain performance bonds as a condition to your being awarded a government contract?

Yes _____ No _____

a. If yes, have you applied for the SBA Bond guarantee? Yes _____ No _____

b. If so, has the SBA bonding program been helpful in solving your bonding problems? Yes _____ No _____

Comments: _____

_____

_____

_____

_____

_____

_____

_____

15. Do you believe that government contracting officers and specialists impose more stringent criteria, in the bidding and selection process, on minority and/or women firms?

Minorities	Women
Yes _____ No _____	Yes _____ No _____

If so, how are these more stringent criteria manifested? _____

_____

_____

_____

_____

16. Do you believe government contracting officers and specialists impose more stringent criteria on minority and/or women owned firms in contract administration?

Minorities	Women
Yes _____ No _____	Yes _____ No _____

If so, how are these more stringent criteria manifested? _____

_____

_____

17. Which of the following problems have you encountered in the operation of your government contracts:

a. Failure to understand what was required of you?_____

b. Failure to understand government contracting regulations?_____

c. The demonstration of hostile attitudes towards your company by government represenatatives?_____

d. Slow approval of your invoices and late payments?_____

e. Failure to obtain an advance? _____

In which sector did you encounter these difficulties? Federal _____

State _____ County _____ City _____

Comment: _____

18. Which of the following are your 3 major obstacles to obtaining more government contracts?

a. Understanding of government contracting procedures? _____

b. No knowledge of future bidding opportunities? _____

c. Inadequate marketing staff? _____

d. Inadequate track record? _____

e. Overbidding? _____

f. Insufficient working capital? _____

g. Bonding? _____

h. Preparation of bids and proposals? _____

i. Inadequate staff? _____

j. Preselection before the formal bidding process? _____

Comment: _____

19. What would you recommend to increase the number and volume of contracts awarded to minority and women-owned firms? _____

APPENDIX B

DISTRIBUTION OF CONTRACTING SPECIALISTS BY SEX, RACE, AND GRADE IN NINE SELECTED FEDERAL AGENCIES

Table 26. DISTRIBUTION OF CONTRACTING SPECIALISTS BY SEX, RACE, AND GRADE IN NINE SELECTED FEDERAL AGENCIES

Department of Defense

Employees by Race and Sex		Total	Percent
GS 16-18	Total	20	100.0
	Nonminority Men	20	100.0
	Minority Men	--	---
	Nonminority Women	--	---
	Minority Women	--	---
GS 13-15	Total	2,317	100.0
	Nonminority Men	2,186	94.4
	Minority Men	53	2.3
	Nonminority Women	75	3.2
	Minority Women	3	0.1
GS 9-12	Total	8,139	100.0
	Nonminority Men	5,640	69.3
	Minority Men	296	3.6
	Nonminority Women	1,942	23.9
	Minority Women	261	3.2
GS 5-8	Total	1,508	100.0
	Nonminority Men	636	42.2
	Minority Men	50	3.3
	Nonminority Women	697	46.2
	Minority Women	125	8.3

Department of Agriculture

GS 16-18	Total	--	---
	Nonminority Men	--	---
	Minority Men	--	---
	Nonminority Women	--	---
	Minority Women	--	---
GS 13-15	Total	37	100.0
	Nonminority Men	29	78.4
	Minority Men	6	16.2
	Nonminority Women	22	5.4
	Minority Women	--	---
GS 9-12	Total	328	100.0
	Nonminority Men	279	85.1
	Minority Men	28	8.5
	Nonminority Women	9	2.7
	Minority Women	12	3.7
GS 5-8	Total	53	100.0
	Nonminority Men	24	45.3
	Minority Men	5	9.4
	Nonminority Women	22	41.5
	Minority Women	2	3.8

TABLE 26 (Continued)

Employees by Race and Sex		Total	Percent
Department of Health, Education, and Welfare			
GS 16-18	Total	--	---
	Nonminority Men	--	---
	Minority Men	---	---
	Nonminority Women	--	---
	Minorit, Women	--	---
GS 13-15	Total	114	100.0
	Nonminority Men	95	83.3
	Minority Men	5	4.4
	Nonminority Women	11	9.7
	Minority Women	3	2.6
GS 9-12	Total	153	100.0
	Nonminority Men	83	54.3
	Minority Men	12	7.8
	Nonminority Women	46	30.1
	Minority Women	12	7.8
GS 5-8	Total	42	100.0
	Nonminority Men	9	21.4
	Minority Men	3	7.1
	Nonminority Women	23	54.8
	Minority Women	7	16.7
	#	#	#
Department of Housing and Urban Development			
GS 16-18	Total	--	---
	Nonminority Men	--	---
	Minority Men	--	---
	Nonminority Women	--	---
	Minority Women	--	---
GS 13-15	Total	15	100.0
	Nonminority Men	14	93.3
	Minority Men	0	---
	Nonminority Women	1	6.7
	Minority Women	0	---
GS 9-12	Total	18	100.0
	Nonminority Men	8	44.4
	Minority Men	1	5.6
	Norminority Women	6	33.3
	Minority Women	3	16.7
GS 5-8	Total	6	100.0
	Nonminority Men	1	16.7
	Minority Men	2	33.3
	Nonminority Women	1	16.7
	Minority Women	2	33.3

TABLE 26. (Continued)

Employees by Race and Sex		Total	Percent
	Environmental Protection Agency		
GS 16-18	Total	--	---
	Nonminority Men	--	---
	Minority Men	--	---
	Nonminority Women	--	---
	Minority Women	--	---
GS 13-15	Total	20	100.0
	Nonminority Men	18	90.0
	Minority Men	0	---
	Nonminority Women	2	10.0
	Minority Women	0	0
GS 9-12	Total	28	100.0
	Nonminority Men	19	67.9
	Minority Men	2	7.1
	Nonminority Women	7	25.0
	Minority Women	0	---
GS 5-8	Total	9	100.0
	Nonminority Men	3	33.3
	Minority Men	0	---
	Nonminority Women	5	55.6
	Minority Women	1	11.1
	#	#	#
	General Services Administration		
GS 16-18	Total	--	---
	Nonminority Men	--	---
	Minority Men	--	---
	Nonminority Women	--	---
	Minority Women	--	---
GS 13-15	Total	116	100.0
	Nonminority Men	104	89.7
	Minority Men	3	2.5
	Nonminority Women	9	7.8
	Minority Women	--	---
GS 9-12	Total	372	100.0
	Nonminority Men	175	47.1
	Minority Men	19	5.1
	Nonminority Women	131	35.2
	Minority Women	47	12.6
GS 5-8	Total	133	100.0
	Nonminority Men	25	18.8
	Minority Men	15	11.3
	Nonminority Women	60	45.1
	Minority Women	33	24.8

TABLE 26 (Continued)

Employees by Race and Sex		Total	Percent
	Department of Transportation		
GS 16-18	Total	--	---
	Nonminority Men	--	---
	Minority Men	--	---
	Nonminority Women	--	---
	Minority Women	--	---
GS 13-15	Total	111	100.0
	Nonminority Men	95	85.6
	Minority Men	7	6.3
	Nonminority Women	7	6.3
	Minority Women	2	1.8
GS 9-12	Total	213	100.0
	Nonminority Men	129	60.6
	Minority Men	13	6.1
	Nonminority Women	54	25.4
	Minority Women	17	7.9
GS 5-8	Total	64	100.0
	Nonminority Men	26	40.6
	Minority Men	5	7.8
	Nonminority Women	27	42.2
	Minority Women	6	9.4
	#	#	#
	Veterans Administration		
GS 16-18	Total	--	---
	Nonminority Men	--	---
	Minority Men	--	---
	Nonminority Women	--	---
	Minority Women	--	---
GS 13-15	Total	9	100.0
	Nonminority Men	4	44.4
	Minority Men	0	---
	Nonminority Women	5	55.6
	Minority Women	0	---
GS 9-12	Total	118	100.0
	Nonminority Men	80	67.8
	Minority Men	6	5.1
	Nonminority Women	25	21.2
	Minority Women	7	5.9
GS 5-8	Total	55	100.0
	Nonminority Men	29	52.7
	Minority Men	3	5.5
	Nonminority Women	20	36.3
	Minority Women	3	5.5

TABLE 26 (Continued)

Employees by Race and Sex		Total	Percent
	Department of Labor		
GS 16-18	Total	--	---
	Nonminority Men	--	---
	Minority Men	--	---
	Nonminority Women	--	---
	Minority Women	--	---
GS 13-15	Total	35	100.0
	Nonminority Men	32	91.4
	Minority Men	2	5.7
	Nonminority Women	0	---
	Minority Women	1	2.9
GS 9-12	Total	47	100.0
	Nonminority Men	19	40.4
	Minority Men	7	14.9
	Nonminority Women	12	25.6
	Minority Women	9	19.1
GS 5-8	Total	11	100.0
	Nonminority Men	3	27.3
	Minority Men	0	---
	Nonminority Women	1	9.1
	Minority Women	7	63.6

APPENDIX C

MINORITY CONTRACTING BY THE GENERAL SERVICES ADMINISTRATION:
A CASE STUDY

The Interagency Task Force on Government Procurement estimated that the General Services Administration (GSA) spent $1.3 billion, or 2.3 percent of the $57.5 billion spent for Federal procurement in FY 1972, and about 5 percent of non-Defense Department expenditures.[210] More important for the purposes of this report, GSA purchases cover almost the entire range of consumer goods that the government buys, from pencils, typewriters, and desks to automobiles and buildings. The agency buys, stores, and transports large quantities of supplies to its stores, which distribute them to other Federal agencies. GSA also maintains its own equipment, which consists primarily of office machines and automobiles, and builds or leases Federal buildings which it also maintains. By the nature of this mission, GSA is a prime market for most potential government contractors and offers particularly attractive marketing opportunities for small firms owned by minority and female entrepreneurs.

DIRECT CONTRACT AWARDS TO MINORITY FIRMS

Figures supplied by OMBE reveal that GSA purchased items amounting to a total of about $39 million from minority-owned firms, which accounted for 3 percent of its FY 1972 procurement dollars.[211] The figures also show that GSA's FY 1972 direct contracting with minority firms amounted to $4.8 million, accounting for only 16 percent of all its purchases from minority firms. Thus, 8(a) purchases accounted for 84 percent of GSA's procurement from minority firms.[212]

The ability of the 8(a) program to increase minority participation in Federal procurement is attested to by the fact that GSA's 8(a) contracts provided over $34 million procurement dollars to minority firms in FY 1972, as compared to $346,676 in FY 1969.

210. Report on Government Procurement, vol. 1, p. 3.

211. See U.S., Department of Commerce, Office of Minority Business Enterprise, Progress Report, The Minority Business Enterprise Program (1972), and table 1 in chapter 1 of this report.

212. The 8(a) program does not currently classify its data by the sex of the owner, so data are available only for minority participation in general.

These figures raise the questions, however, of whether GSA's 8(a) record was attained by the denial of direct procurement contracts to minority firms, and whether the agency tends to confine its minority suppliers to the 8(a) program. The Commission found no direct evidence that either is the case, but the imbalance between the amount of 8(a) and direct contracts indicates that this is a matter of concern.

A more serious concern for the 8(a) program and minority firms is whether firms that have developed markets with GSA through the program will be able to sell to the agency directly. This question goes to the heart of the problem of the effectiveness of the 8(a) program. No official interviewed was willing to estimate the likelihood of firms moving from 8(a) to competitive status, although some cited individual firms with good prospects. In general, however, their views were not optimistic.

TYPE AND SIZE OF 8(a) CONTRACTS

GSA is one of the most effective agencies in terms of performance in the 8(a) program as measured by both contracting efforts and the commitment to the program expressed by GSA officials. A close analysis of GSA's 8(a) contracting, however, pinpoints persistent problems in the program's direction.

In FY 1972, GSA reported 473, 8(a) contracts amounting to $34.2 million. (There were 1,720 Federal 8(a) contracts totaling $153 million for that year.)[213] Excluding concessions and 2 contracts of no monetary value, GSA's 8(a) contracting amounted to 401 contracts for $25.3 million.[214] Thus, GSA awarded 23 percent of all Federal 8(a)

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213. All references to FY 1972 GSA 8(a) contracting are based on U.S., General Services Administration, 8(a) Contracts Awarded July 1, 1971 Through June 30, 1972 (Aug. 14, 1972) rather than SBA's totals. GSA totals are reported in U.S., Small Business Administration, Status Report of 8(a) Contracts (Sept. 30, 1972). The use of this SBA report is discussed in chapter 5. Comparative 8(a) procurement for selected Federal agencies is shown in table 11.

214. GSA reported 70 concessions worth $8.9 million for FY 1972. They are excluded from this analysis because the values are actually projections of gross sales by the contractors rather than amounts spent by GSA to purchase goods or services.

contracts, representing 18 percent of the total dollar value. In FY 1973, the agency awarded 415 8(a) contracts valued at $35.6 million, representing 21 percent of all 8(a) contracts and 19 percent of the total dollar value.[215]

As table 27 shows, GSA's 8(a) contracts are concentrated in the services. In FY's 1972 and 1973, more than half the contracts, but less than one-third of the dollar value, were awarded to service industries. Construction contracts accounted for slightly more than one-third of both the number of contracts and the dollar value for the 2 years.

TABLE 27. INDUSTRIAL DISTRIBUTION OF GSA 8(a) CONTRACTS, FISCAL YEARS 1972 AND 1973 (EXCLUDING CONCESSIONS)

	FY 1972				FY 1973		
Industrial Category	No.	Percent	Dollar Value (Millions)	Percent	No.	Dollar Value (Millions)	Percent
Manufacturing	56	14%	9.3	36%	45	12.9	35%
Construction	157*	39	8.7	34	142	14.2	39
Services	188	47	7.9	30	228	9.5	26
Total	401*	100	25.9	100	415	36.6	100

*Contracts listed at $0 substracted from total contracts.

Source: Calculated from, U.S., General Services Administration, 8(a) Contracts Awarded July 1, 1971 Through June 30, 1972 (Aug. 14, 1973) and 8(a) Contracts Awarded Fiscal Year 1973 (Sept 5, 1973.)

There are a few manufacturing contracts of relatively large size and many services contracts of relatively small size. While the value of manufacturing contracts indicates that GSA is providing significant opportunities, the continued reliance on small service contracts tends to perpetuate the existing industrial distribution of minority firms.

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215. All references to FY 1973 GSA 8(a) contracting are based on U.S., General Services Administration, 8(a) Contracts Awarded Fiscal Year 1973 (Sept. 5, 1973). A comparable adjustment for concession contracts (26 awards for $13.9 million) has been made. SBA totals differ very markedly from GSA's. The overall GSA total used here is taken from U.S., Small Business Administration, Status Report of 8(a) Contracts (September 1973).

In FY's 1972 and 1973, respectively, 75 and 72 percent of the contracts were less than $50,000, and only 16 and 15 percent of the contracts in FY's 1972 and 1973, respectively, were over $100,000. (See table 28.)

Furthermore, despite the fact that GSA's 8(a) contracting increased by more than 40 percent from FY 1972 to 1973, the median value of the contracts remained at about $20,000. Table 29 provides a rough indication of the relative differences in contract values in the different industrial categories. Most Federal Supply Service (FSS) contracts are for manufacturing, and Property Management and Disposal Service (PMDS) contracts are for services.[216]

Although the Public Building Service (PBS) awards the largest number of contracts, about one-third of them are for janitorial and other maintenance services. Most of those contracts are valued at under $100,000 per fiscal year. Also, a large majority of its construction contracts are for painting and minor remodeling jobs. Brief contract descriptions provided by GSA for FY 1972 reveal only 12, 8(a) contracts for general construction, and all were for rather small jobs. Since construction bonding is based upon previous work, the opportunity for minority firms to obtain larger construction jobs is, thus, very limited.[217]

The statistics in table 29 show that, even in one of the most committed and active agencies, the 8(a) program is limited. Close examination of the nature of all 8(a) contracts raises doubts about the effectiveness of the program in bringing about minority business development.

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216. PMDS totals may be overstated because the reported value of many of its contracts are projections rather than actual expenditures. GSA reorganization on July 1, 1973, abolished the PMDS and transferred its activities to other services.

217. GSA officials stated that "phased construction" and the planned expansion of Federal office space over the next few years will provide more significant opportunities for minority firms in 8(a) contracts, direct contracts, and subcontracting.

TABLE 28. DISTRIBUTION OF GSA 8(a) CONTRACTS BY DOLLAR VOLUME, FY 1972 AND 1973 (EXCLUDING CONCESSIONS)

Values	No. FY 1972	No. FY 1973
Under $25,000.	231	244
$25,000.50-50,000.	68	56
$50,000.50-75,000.	23	35
$75,000.50-100,000.	14	18
$100,000.50-125,000.	8	11
$125,000.50-150,000.	9	3
$150,000.50-175,000.	7	4
$175,000.50-200,000.	9	7
$200,000.50-225,000.	3	2
$225,000.50-250,000.	3	3
$250,000.50-275,000.	5	8
$275,000.50-300,000.	3	2
$300,000.50-325,000.	3	1
$325,000.50-350,000.	1	3
$350,000.50-375,000.	0	2
$375,000.50-400,000.	1	0
Over $400,000.*	13	16
Total	401	415

*The number of contracts over $1 million increased from 1 in FY 1972 to 7 in 1973.

Source: Tabulated from U.S., General Services Administration, 8(a) Contracts Awarded July 1, 1971 through June 30, 1972 (Aug. 14, 1972) and 8(a) Contracts Awarded Fiscal Year 1973 (Sept. 5, 1973).

TABLE 29. DATA ON GSA 8(a) CONTRACTS BY SERVICE, FISCAL YEARS 1972 AND 1973
(EXCLUDING CONCESSIONS)

Fiscal Year 1972

GSA Service	No. of Contracts	Value of Contracts	Dollar Range	Value of Average Contract	Median Value (Approximately)
FSS**	80	$11,211,827	$3,000 - 1,020,925	$140,148	$51 925
PBS	249*	13,330,526	1,527 - 875,000	53,536	19,996
PMDS	51	692,165	2,500 - 75,000	13,572	8,000
Other	21	623,878	2,500 - 200,000	29,708	7,300
GSA Total	401*	$25,858,396	$1,527 - 1,020,925	$ 64,485	$20,122

(Values rounded to nearest whole dollar.)

* 2 contracts listed at $0 subtracted from service and agency total.

Source: Tabulated and calculated from U.S., General Services Administration, 8(a) Contracts Awarded July 1, 1971 through June 30, 1972 (Aug. 14, 1972).

Fiscal Year 1973

GSA Service	No. of Contracts	Value of Contracts	Dollar Range	Value of Average Contract	Median Value (Approximately)
FSS	78	$16,374,000	$2,500 - 3,133,166	$209,923	$70,000
PBS	253	18,251,629	1,495 - 3,375,947	72,141	19,000
PMDS	84	1,934,824	2,000 - 300,000	23,034	7,500
GSA Total	415	$36,560,980	$1,495 - 3,375,947	$ 99,099	$20,000

(Values rounded to nearest whole dollar.)

**FSS (Federal Supply Service); PBS (Public Building Service); PMDS (Property Management and Disposal Service).

Source: Tabulated and calculated from U.S., General Services Administration, 8(a) Contracts Awarded Fiscal Year 1973 (Sept. 5, 1973).

The statistics in table 29 show that, even in one of the most committed and active agencies, the 8(a) program is limited. Close examination of the nature of all 8(a) contracts raises doubts about the effectiveness of the program in bringing about minority business development.